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FINE ARTS
MUSEUMS
of SAN FRANCISCO

Board of Trustees
California Palace of the Legion of Honor
M.H. de Young Memorial Museum

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NOTICE OF CHANGE IN MEETING DATE

Board of Trustees
Fine Arts Museums of San Francisco
Thursday
January 31, 2002
3 p.m.

Board Room
California Palace of the Legion of Honor
Lincoln Park, San Francisco

Notice is hereby given that the date of the regular meeting of the Board of Trustees of the Fine Arts Museums of San Francisco has been changed to Thursday, January 31, 2002, from Thursday, January 10, 2002.

The January 31st meeting will be held at 3 p.m., in the Board Room of the California Palace of the Legion of Honor, Lincoln Park, San Francisco.

Judy Gough
Executive Secretary
Museums
750-3669

Administrative Offices
233 Post Street, San Francisco, CA 94108-500[illegible]
tel 415.750.3600 fax 415.750.7686

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FINE ARTS
MUSEUMS
of SAN FRANCISCO

Board of Trustees
California Palace of the Legion of Honor
M.H. de Young Memorial Museum

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OFFICIAL SPECIAL MEETING NOTICE[1]

Fine Arts Museums of San Francisco
Board of Trustees

Thursday, January 31, 2002

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Legion Café and Board Room
California Palace of the Legion of Honor
Lincoln Park
San Francisco, California

1:30 p.m.
Workshop on the New de Young Financing Plan to Address Issues Raised in Tax Exempt Financing for Non-profit Organizations

The workshop is intended to offer Trustees a forum for informal discussion regarding the New de Young Financing Plan and associated Lease and Facilities Agreement between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation. No action will be taken during this workshop portion of the discussions. The discussion of the New de Young Financing Plan and the Lease and Facilities Agreement will continue as Items III. D. and III. E. on pages 5, 6 and 7 of this Agenda. Public testimony will occur at the latter portion of the discussion of this matter and before the Trustees take any action on this matter. (See Attached Explanatory Documents: New de Young Museum, Revenue Bonds, Series 2002, Fine Arts Museums Board of Trustees, Workshop, January 31, 2002; and Draft Lease and Facilities Agreement ("Agreement") between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation and Executive Summary Pertaining to the Agreement.)

SEPERATELY BOUND AND CATALOGUED

3:00 p.m.
Regular Business Meeting

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[1] Because of the Workshop scheduled for 1:30 p.m. and the change in meeting date from January 10, 2002 to January 31, 2002, the meeting is being noticed as a Special Meeting of the Board of Trustees.

4 49383 SFPL: ECONO JRS
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Legion Café and Board Room
California Palace of the Legion of Honor
Lincoln Park
San Francisco, California

AGENDA

Thursday, January 31, 2002
3:00 p.m.

ORDER OF BUSINESS

I. Calling of the Meeting to Order – Diane B. Wilsey, President

II. Calling of the Roll

Trustees
Del M. Anderson
Cheryl L. Bancroft
Alvin H. Baum, Jr.
Alix Phillips Becker
George McNear Bowles
Jamie Bowles
T. Robert Burke
Barbara B. Carleton
Iris S. Chan
Barnaby Conrad III
Marion Moore Cope
Belva Davis, Vice President/Audience Development and Civic Affairs
Dagmar Dolby
Richard P. Essey
Richard H. Finn
Morgan Flagg
Harrison S. Fraker, Jr.
Tamara Fritz
Dr. Rupert Garcia
Richard N. Goldman
Constance Goodyear
Nancy Hamon
George Hecksher
Jacqueline Hoefer
Beverly James
J. Burgess Jamieson
Ann L. Johnson, M.D.
Stephen L. Johnson

Calling of the Roll (continued)

Terrence Johnson
William R. Kimball
Diane B. Lloyd-Butler, Vice President/Marketing and Communications
Nancy McBean
Nion McEvoy
J. Alec Merriam, Vice President
Lorna F. Meyer
Josie Mooney
Robert P. Morrow III, Vice President/Finance
Joy Ou
Marianne H. Peterson
Shelagh Rohlen, Vice President/Annual Support
George B. Saxe
Randolph R. Scott
Burl A. Toler, Sr.
Vivian Fei Tsen
Carlos Pedro Villa
Lonna Wais
Margaret Wetzel
Nancy Willis
Diane B. Wilsey, President
David Winton

Ex-Officio Trustee Members
Mayor Willie L. Brown, Jr.
Gordon Chin, President/Recreation and Park Commission

Absences to be Excused

There will be an opportunity for public comment on each agenda item.

III. Report of the President – Diane B. Wilsey

A. Consideration and Possible Action to Approve the Minutes of the December 13, 2001 Meeting of the Executive Committee of the Board of Trustees (See Appendix A – Draft Minutes) — Action

B. Report on 2001 Year-End Gifts of Works of Art – J. Alec Merriam, Chair, Acquisitions Committee of The Fine Arts Museums Foundation (See Appendix B – 2001 Year-End Gifts of Works of Art Report) — Discussion

C. Report on Recent Developments Regarding the Plans to Build a New de Young Museum in Golden Gate Park **Discussion**

1. Presentation on Recent Developments Regarding the Design of the New de Young Museum in Golden Gate Park – Pierre de Meuron, Herzog & de Meuron Architekten AG **Discussion**

2. Report on the December 6, 2001 Public Hearing Before the San Francisco Planning Commission Regarding the Revisions to the Final Environmental Impact Report for the Proposed de Young Museum Project Pertaining to the Height of the Education Tower and to Some Aspects of the Analysis of the Impact on Historic Resources and the San Francisco Planning Commission's Action to Certify the Revisions to the FEIR for the Proposed de Young Museum **Discussion**

3. Report on the Public Hearing of the Board of Supervisors on January 14, 2002 Regarding the Appeal of the Planning Commission's Certification of the Revised Final Environmental Impact Report (FEIR) for the Proposed de Young Museum Project, Which Includes Revisions Pertaining to the Height of the Education Tower and to Some Aspects of the Analysis of the Impact on Historic Resources, and the Subsequent Action of the Board of Supervisors to Uphold the Decision of the San Francisco Planning Commission to Certify the Revised FEIR for the Proposed de Young Museum Project **Discussion**

4. Report on the Public Hearing of the Recreation and Park Commission on January 17, 2002 Regarding the Shadow Impacts of the New de Young Museum Project on Golden Gate Park **Discussion**

5. Report on the Public Hearing of the San Francisco Planning Commission on January 24, 2002 and Its Determination Regarding (a) Findings Pursuant to California Environmental Quality Act Regarding the New de Young Museum Project, (b) Shadow Impacts of the New de Young Project on Golden Gate Park as Required by Planning Code Section 295, (c) Finding the New de Young Museum Project Consistent with the General Plan. Report on the Zoning Administrator's Hearing Regarding the Parking Variance on January 24, 2002 Held Concurrently with Planning Commission Hearing (See Appendix C – Planning Commission Draft Motions Regarding General Plan Referral and Shadow Impacts Determination) **Discussion**

6. Consideration and Possible Action to Adopt a Resolution Adopting the Findings Pursuant to California Environmental Quality Act Regarding the New de Young Museum Project Environmental Impact Report Including Mitigation Measures, Rejection of Alternatives, Statement of Overriding Considerations and Mitigation Monitoring Program, Approving the Design of the New de Young Museum Project and Authorizing the Corporation of The Fine Arts Museums to Proceed with the Project (See Resolution Attached Hereto as Appendix D) **Action**

D. Consideration and Possible Action to Adopt a Resolution Approving the New de Young Financing Plan Proposed by the Corporation of the Fine Arts Museums and The Fine Arts Museums Foundation (See Appendix – New de Young Museum, Revenue Bonds, Series 2002, Fine Arts Museums Board of Trustees, Workshop, January 31, 2002) **Action**

WHEREAS, The highest institutional priority of the Fine Arts Museums of San Francisco is to build a New de Young Museum in Golden Gate Park; and

WHEREAS, Efforts to secure public funding for a New de Young Museum were unsuccessful with San Francisco general obligation bonds failing to meet the 66.7% requirement for passage in 1996 (62.6% yes votes) and 1998 (64.3% yes votes); and

WHEREAS, At the request of the Board of Trustees of the Fine Arts Museums of San Francisco, the Capital Campaign for a New de Young Museum was initiated by the Corporation of The Fine Arts Museums with a fund-raising goal of $165 million, of which over $150 million has been raised to date; and

WHEREAS, The schedule of pledges extends over a five year period, and the construction schedule for the New de Young Museum will require immediate payments before the pledges are received; and,

WHEREAS, The Board of Trustees of the Fine Arts Museums has reviewed the Final Environmental Impact Report for the New de Young Project, and adopted CEQA findings for approval of the Project at this January 31, 2002 meeting under Agenda Item III.C(6), which findings are incorporated by reference herein; now, therefore, be it

RESOLVED, That to meet the cash flow requirements for the construction of the New de Young Museum, the Board of Trustees of the Fine Arts Museums of San Francisco does hereby approve the New de Young Financing Plan and supports the decision of the Corporation of The Fine Arts Museums and The Fine Arts Museums Foundation to seek the sale and issuance

of tax-exempt bonds by the appropriate state financing authority, which will be guaranteed by the future flow of pledges; and, be it

FURTHER RESOLVED, That the President of the Board of Trustees and Director of Museums are hereby authorized to take all necessary steps to facilitate the issuance of said tax-exempt bonds.

E. Consideration and Possible Action to Adopt a Resolution Approving the Draft Lease and Facilities Agreement Between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation and Authorizing the Director of Museums to Take All Necessary Steps to Finalize and Execute Such Agreement (Including Any Attached Exhibits) in Substantially the Form Attached Hereto and Approved as to Form by the City Attorney (See Appendix E – Executive Summary Pertaining to the Lease and Facilities Agreement for a New de Young Museum By and Between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation and Draft of the Lease and Facilities Agreement) **Action**

WHEREAS, The Board of Trustees of the Fine Arts Museums of San Francisco (FAMSF) has approved the New de Young Financing Plan and requested the Corporation of The Fine Arts Museums (COFAM) and The Fine Arts Museums Foundation (Foundation) to issue tax-exempt bonds to meet the cash flow requirements for the construction of the New de Young Museum; and

WHEREAS, To secure such financing, the role of the Foundation is critical in generating future revenues required over the anticipated thirty year term of the tax-exempt bonds; and

WHEREAS, A Lease and Facilities Agreement between FAMSF and the Foundation defines the respective roles and responsibilities of FAMSF and the Foundation for the use and operation of the New de Young Museum and will help facilitate the financing for the New de Young Museum; and

WHEREAS, The Foundation is a non-profit charitable organization whose primary purpose is to support the activities of FAMSF; and

WHEREAS, The Board of Trustees of the Fine Arts Museums has reviewed the Final Environmental Impact Report for the New de Young Project and adopted CEQA findings for approval of the Project at this January 31, 2002 meeting under Agenda Item III.C(6), which findings are incorporated by reference herein; now, therefore, be it

RESOLVED, That the Board of Trustees of FAMSF hereby finds that in light of the Foundation's primary charitable purpose to support the activities of FAMSF, the Foundation's use of the museum facilities in accordance with the terms of the Lease and Facilities Agreement is an appropriate use of such museum facilities and will provide a benefit to FAMSF and the public; and, be it

FURTHER RESOLVED, That the Board of Trustees of FAMSF hereby approves of the Lease and Facilities Agreement between FAMSF and the Foundation and the transaction contemplated therein and authorizes the Director of Museums to take all necessary steps to finalize and execute the Lease and Facilities Agreement (including any attached exhibits) in substantially the form attached hereto and approved as to form by the City Attorney; and, be it

FURTHER RESOLVED, That the Board of Trustees of FAMSF further authorizes the Director of Museums to enter into any additions, amendments or other modifications to the Lease and Facilities Agreement (including, without limitation, the attached exhibits), approved as to form by the City Attorney, that the Director of Museums determines are in the best interests of FAMSF, do not decrease the benefit to FAMSF or otherwise materially increase the obligations or liabilities of FAMSF in connection with the Lease and Facilities Agreement, and are necessary or advisable to complete the transaction contemplated in the Lease and Facilities Agreement and to effectuate the purpose and intent of this resolution; and, be it

FURTHER RESOLVED, That any actions previously taken by any City employee or official with respect to the Lease and Facilities Agreement are hereby ratified and affirmed.

F. Report of the Nominating Committee – Nion McEvoy, Chair — **Discussion**

  1. Consideration and Possible Action to Accept the Resignation of Terrence Johnson from the Board of Trustees of the Fine Arts Museums of San Francisco — **Action**

G. Report on the Cancellation of the February 14, 2002 Executive Committee Meeting — **Discussion**

H. Other Information Items — **Discussion**

IV. Director's Report – Harry S. Parker III

A. Consideration and Possible Action to Approve Two Additional Venues to a Previously Approved Loan Request (See Appendix F) — **Action**

B. Consideration and Possible Action to Adopt Notice and Appeal Procedures for Removal of Trees on Property under the Jurisdiction of the Fine Arts Museums of San Francisco Pursuant to Resolution 722-98 Approved by the Board of Supervisors Urging Departments to Adopt Such Policies and Procedures (Draft Notice and Appeal Procedures for Removal of Trees on Property under the Jurisdiction of the Fine Arts Museums To Be Distributed at Meeting) **Action**

C. Consideration and Possible Action to Adopt a Resolution Acknowledging Funding Expended by the Corporation of The Fine Arts Museums During the Period July 1 through September 30, 2001 **Action**

WHEREAS, The Corporation of The Fine Arts Museums is a 501(c)(3) not-for-profit corporation that exists to support the activities of the Fine Arts Museums of San Francisco and to serve as the developer of the New de Young Museum, and has a partial reimbursement contract with the Fine Arts Museums of San Francisco; now, therefore, be it

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby acknowledge with gratitude funding in the amount of $2,906,602 expended by the Corporation of The Fine Arts Museums for operations and $1,478,451 for the New de Young Museum in Golden Gate Park during the period July 1 through September 30, 2001.

D. Consideration and Possible Action to Adopt a Resolution Acknowledging Bequests Received by the Fine Arts Museums of San Francisco for the Period July 1 through September 30, 2001 **Action**

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby acknowledge with gratitude the following bequests received during the period July 1 through September 30, 2001:

Estate of Lester Hamilton, $17,920

E. Report on January 9-11, 2002 American Association of Museums Re-Accreditation Visit **Discussion**

F. Update on the City Budget **Discussion**

G. Consideration and Possible Action to Adopt a Resolution Authorizing the Board President and Director of Museums to Submit the Fiscal Year 2002-2003 City Budget Request — Action

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby authorize the Board President and the Director of Museums to sign and submit the Fiscal Year 2002-2003 City Budget request for the Fine Arts Museums of San Francisco.

H. Current and Future Exhibits — Discussion

I. Other Informational Items — Discussion

V. Public Comment

Members of the public may address the Board of Trustees on items not on the agenda that are within the subject matter jurisdiction of the Fine Arts Museums of San Francisco. Speakers may address the Board for up to three minutes; the President or the Board of Trustees may limit the total comment to thirty minutes.

VI. Meeting Schedule, Future Events and Current and Future Exhibits (See Appendix G - List of Board and Executive Committee Meetings, Events and Exhibitions) — Discussion

VII. Adjournment in Memory of Trustee Emeritus John N. Rosekrans, Jr., and Trustee Emeritus Alfred S. Wilsey – Diane B. Wilsey, President — Action

Public Meeting Requirements Relating to Accessibility

The subsequent information is in compliance with the Americans with Disabilities Act (ADA); the following will be made available upon request: (1) American sign language interpreters; (2) a sound enhancement system; (3) a meeting agenda available in alternative formats; and (4) a reader during the meeting. To arrange for these services, please contact Judy Gough at (415) 750-3669 at least two working days prior to a meeting. A late request will be honored if possible. Minutes of the meeting will be made in alternative formats upon request. Meeting agendas are available on the Fine Arts Museums of San Francisco website, *www.thinker.org.*

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, those attending public meetings are reminded that others may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

The MUNI's wheelchair-accessible No. 18 line stops in front of the Legion. For access to the Legion from downtown, take MUNI's wheelchair-accessible No. 38 Geary line to 33rd and Clement and connect with the No. 18 line. For more information about MUNI's accessible services, call (415) 923-6142.

There are accessible parking spaces (disabled-designated) available in front of the Legion. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. For Telecommunication Device for the Deaf (TDD), the Museums use the California Relay Service.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the President may order the removal from the meeting of any person(s) responsible for the ringing or use of cell phones, pagers, or other similar sound-producing electronic devices.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force:

Donna Hall, Administrator
Sunshine Ordinance Task Force
City Hall, Room 409
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4683
Office: (415) 554-7724
Fax: (415) 554-7854
E-mail: Donna_Hall@ci.sf.ca.us

Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library and on the City's website at www.ci.sf.ca.us/bdsupvrs/sunshine.

If you are unable to attend the meeting, you may submit written comments to Judy Gough, Fine Arts Museums of San Francisco, 233 Post Street, 6th Floor, San Francisco, CA, 94108. Public documents referred to in the agenda may be inspected at the Administrative Offices of the Fine Arts Museums located at 233 Post Street, 6th Floor, San Francisco, CA, 94108. Please contact Judy Gough at (415) 750-3669 to make arrangements.

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Attachment B

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THE FINE ARTS MUSEUMS OF SAN FRANCISCO

Report of
2001 Year End Gifts of Works of Art

In accordance with resolutions adopted by the Board of Trustees of The Fine Arts Museums Foundation on January 15, 2002 and the Executive Committee of the Board of Trustees of the Fine Arts Museums of San Francisco on December 13, 2001, the gifts on the following pages were accepted by the Director of Museums, or his designee, for the period from November 30, 2001 (last Acquisitions Committee meeting) through December 31, 2001.

Africa, Oceania, and the Americas

Zaire
Power Figure, 19th - 20th century

Ghana
Portrait Head of a Royal Person, 17th century

Philippines
Basket with Slider, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Shell Basket, early 20th century

Philippines
Spoon Basket, early 20th century

Philippines
Winnowing Basket, early 20th century

Philippines
Rice Storage Basket (kamuwan) with Lid, early 20th century

Philippines
Rice Platter (giyag), early 20th century

Philippines
Winnowing Basket (lig-o), early 20th century

Philippines
Snail Seive (haydu), early 20th century

Philippines
Tobacco Container (koppit), early 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Philippines
Chicken Basket (alubi'ub), mid 20th century

Philippines
Storage Basket (tayaan) with Lid, early 20th century

Philippines
(Rice) Storage Basket (Hu'up or tayaan), early 20th century

Philippines
" Bishop" Backpack Basket, early 20th century

Philippines
Winnowing Basket, early 20th century

Philippines
(Rice) Storage Container Basket (cul bong), early 20th century

Philippines
Basket (labba) with Pontal, early 20th century

Philippines
Double Rice Plate (akob), early 20th century

Philippines
Shell Basket, early 20th century

Philippines
Lunch Basket (topil), early 20th century

Philippines
Backpack Basket (hape'eng) with Lid and Straps, mid 20th century

Philippines
Snail Sieve (haydu), mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Snail Basket, mid 20th century

Philippines
Ceremonial Meat Board, mid 20th century

Philippines
Spoon (ido pakko), mid 20th century

Philippines
Spoon (ido pakko), mid 20th century

Philippines
Spoon (ido pakko), early 20th century

Philippines
Bowl, mid 20th century

Philippines
Bowl, mid 20th century

Philippines
Winnowing Basket (lig-o), mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Spoon, early 19th century

Philippines
Spoon, mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Knife with Sheath, early 20th century

Philippines
Rice Cutter in the form of a Female Figure, 19th century

Philippines
Rice Cutter in the form of an Animal, 19th century

Philippines
Bulul, early 20th century

Philippines
Spoon, early 20th century

Philippines
Spoon, early 20th century

Philippines
Basket or Tote Bag, mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Belt, early 20th century

Philippines
Oval Bowl, early 20th century

Philippines
Spoon, early 20th century

Philippines
Ladle, early 20th century

Philippines
Bowl, early 20th century

Philippines
Round Bowl, early 20th century

Philippines
Spoon, early 20th century

Philippines
Weaving Tool, early 20th century

Philippines
Rice Storage Basket (cul-bong) with Lid, mid 20th century

Philippines
Akob Basket with Lid, mid 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Indonesia
Door with Buffalo Head Motif, 19th century

Indonesia
Coffin Lid with Serpent Symbol, early 19th century

American Art

Ray Beldner (American)
Untitled (Money Bags), 1999

William Wheeler (American) b. 1940
Mendocino Headlands, Near Elk, 1997

Tony King (American) b. 1944
Mendocino Headlands, Near Elk, 1999

Dirk van Erp (American) 1860 - 1933
Water Pitcher, 19th - 20th century

Wayne Thiebaud (American) b. 1920
Ponds and Streams, 2001

Yoshitomo Saito (Japanese) active 20th century
Pacific Crossing, 1998

Vincent James (English) b. 1972
Hole, 1999

Winslow Homer (American) 1836 - 1910
Portrait of Albert Post, circa 1864

Artist: Narcissus Quagliata (Italian) b. 1942, in collaboration with David Ruth
Dionysis, 1993

Nicolai Fechin (American) 1881--1955
Flower Girl, early 20th century

United States
Santa Ines Mission Bench, early 19th century

Durant (American) active mid 20th century
Bowl, 1920

Jalan (American) active mid 20th century
Hexagonal Plate, ca. 1920 - 1939

Jalan (American) active mid 20th century
Footed Bowl, 1933

Jalan (American) active mid 20th century
Tea Cup, ca. 1920 - 1939

Jalan (American) active mid 20th century
Vase, 1926

Jalan (American) active mid 20th century
Pedestal Plate, 1928

European Art

Henry Moore (English) 1898 - 1986
Two Piece Reclining Figure No. 9, 1968

Prints and Drawings

Yoshitoshi (Japanese) 1839 - 1892
Untitled (Man in a Black Floral Kimono) from the series 100 Phases of the Moon, ca. 1890

Koho (Japanese) 1870--1946
Untitled (Crane in a Pine Tree), early 20th century

Elinor Lambert (English) active early 20th century
Caudebec (France), 1927

Ernest David Roth (American) 1879 - 1964
Viale San Gregorio, Roma, 1905

Artist: Winslow Homer (American) 1836 - 1910; Publisher: Harper & Brothers (American) active 19th--20th century
A Parisian Ball - Dancing at the Mabille, Paris from Harper's Weekly, November 23, 1867, 1867

Marc Choisnard (French) active mid 20th century
No. 23, La Cote Rocheuse, 1950

David Lance Goines (American) b. 1945
Proof 1 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 2 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 3 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 4 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 5 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 6 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 7 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 8 for the poster Rainbow Zenith, 1970

Cartón de Colombia, SA (Colombia) active 20th century
AGPA (Artes Gráficas Panamericanas); Copy 1, 1979

Cartón de Colombia, SA (Colombia) active 20th century
AGPA (Artes Gráficas Panamericanas); Copy 2, 1979

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1954-55-56; Copy 1, 1954 - 1956

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1954 55 56, 1954 - 1956

Container Corporation of America (American) active 20th century
Great Ideas of Western Man; Copy 1, 1974

Designer: Herbert Bayer (American) 1900 - 1985; Publisher: Container Corporation of America (American) active 20th century
World Geo-Graphic Atlas: A Composite of Man's Environment, 1953

Container Corporation of America (American) active 20th century
Great Ideas, 1976

Container Corporation of America (American) active 20th century
Color Harmony Manual, 1958

Photographer: Torkel Korling (American) active mid 20th century; Publisher: Container Corporation of America (American) active 20th century
Wild Flowers: a new perspective on the beauty of wild flowers, 1958

Artist: Herbert Bayer (American) 1900 - 1985; Publisher: Container Corporation of America (American) active 20th century
Herbert Bayer, 1965

Cartón y Papel de México, SA (Mexican) active 20th century
El Lienzo de Tlaxcala, 1983

Artist: Herbert Bayer (American) 1900 - 1985; Printer: Zokeisha Publications, Ltd. (Japanese) active 20th century; Publisher: Container Corporation of America (American) active 20th century
Herbert Bayer : Book of Drawings, 1961

Container Corporation of America (American) active 20th century
The State Series: 53 Advertisements by Native ists; Copy , ca. 1950 - 1959

Container Corporation of America (American) active 20th century
Fifty-Two Advertisements: Great Ideas of Western Man; Copy 1, ca. 1950 - 1954

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1950-51-52, 1950 - 1952

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1952-53-54, 1952 - 1954

Esther Brock Bird (American) b. 1899
Jackson Memorial at Washington Square, N.Y.C., 1938

Maurice Busset (French)
Air Raid from the series Paris Bombarde, 1918

Alexandre Charpentier (French) 1875--1963
Liseuse (Woman Reading), 1896

Michael diCerbo (American) active 20th century
Infertu, 1994

Fernand Louis Gottlob (French) 1873--1935
2e Exposition des Peintres Lithographes du 10 au 25 Janvier, Salle du Figaro, Rue Drouot, Plate 219 from the series Les Maitres de l'Affiche, 1899

Lester George Hornby (American) 1882 -
Rocky Neck in Snow, Gloucester, 1918

Lester George Hornby (American) 1882 -
Fanueil Hall from Quincy Market, ca. 1915 - 1920

Artist: Hung Liu (Chinese) 1948 - ; Printer: Tamarind Lithography Workshop Inc. (American) 1960 -
Children at Work: Boy with Pots, 2000

Charles Frederick William Mielatz (American) 1864 - 1919
In the Bowery (New York City), 1891

Horst Janssen (German) 1929 -
Plate 2 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Horst Janssen (German) 1929 -
Plate 3 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Horst Janssen (German) 1929 -
Plate 4 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Artist: Matt Phillips (American) b. 1927; Publisher: Smith Andersen Editions (American)
Untitled (Broadway), 2001

Artist: John Beech (American) active late 20th century;
Publisher: Smith Andersen Editions (American)
Untitled Abstract, 2001

G. Lekegian and Company (France) active mid 19th century
No. 18, Pyramide de Chiech, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 33, Mosquée Mouhamed Aly, Citadelle, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 73, Porte d'Une Maison (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 183, Groupe de Minarets, Vue Prise de El Azhar, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 182, Mosquée El Azhar, Cour des Théologiens, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 299, Mosquée Touloun, Les Arcads, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 189, Rue Sook el Silah, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 122, Bord du Nil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 135, Dame Indigene, Costume de Ville, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 123, Dame au Cane (?) Voilée, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 55, Mosq.(uée) & Rue Emir Akhar, Pres de la Citadelle, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 34, Mosquée Mohemed Aly, Fontaine d'Ablutions, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 48, Mosquée Sultan Hassan, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 44, Verandah d'Une Maison Arabe, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 285, Rue du Marchée des Chaussures, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 77, Vue Generale du Caire, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 281, Ciscleurs sur Cuivres a Khari Kalil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 49, Citadelle (?) Cimitiere (?) Arabes, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 194, Shepheard's Hotel, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 74, Rue Bab el Vazir, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 80, Mosquée Kait Bay, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 81, Mosquée Kaitbay, Intérieur, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 79, Maisons de Village, 19th century

G. Lekegian and Company (France) active mid 19th century
No. (?), Magasin (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 329, Rue a Bab-el-Wazir, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 232, Dahabiéh, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 90, Dahabiéh, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 3, Route des Pyramides, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 96, Bord du Nil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 42, Interieur de la Mosquée Sultan Hassan, 19th century

G. Lekegian and Company (France) active mid 19th century
No. ?, Cérémonie de la Prossession du Mahmal, 19th century

Langahi (?) (French (?))
No. 8, Quai de Port Said, 19th century

Langahi (?) (French (?))
Monument de Lesseps a Port Said, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 9, La Pyramide de Chéops, Vue des Cimetieres Arabes, 19th century

Langahi (?) (French (?))
Queen Victoria's Diamond Jubilee a Port Said, 19th century

Langahi (?) (French (?))
Entrée du Canal a Port Said, 19th century

Langahi (?) (French (?))
No. ?, Vue ???? a Port Said, 19th century

Anonymous (English)
No. 53, Pompey's Pillar, Alexandria, 19th century

Anonymous (English)
Untitled (View of Cairo (?) from Rooftops), 19th century

Anonymous (English)
Mosque of Sultan Hassan, Cairo, 19th century

Anonymous (English)
Fruit and Water Sellers, Cairo, 19th century

Anonymous (English)
No. 57, Street in Cairo, 19th century

Anonymous (English)
Inundation of the Nile, Pyramids of Geezeh, 19th century

Anonymous (French)
Untitled (Mummy Necklace), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 345, Sakiéh (Noria), 19th century

Anonymous (French)
Untitled (Front of Chariot), 19th century

Anonymous (French)
Untitled (Habillement de Momie), 19th century

Anonymous (French)
Untitled (Two Crowns on Velvet), 19th century

Anonymous
Untitled (Secandra Inside Gate ?), 19th century

Photographer: Anonymous (French) ; Photographer: Anonymous
No. 128, Interior of Saman Burj and the Scale of Justice, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 9, La Pyramide Cheffren, Vue a Travers las Palmiers, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 294, Mosquée Touloun: Méda, Fontaine d'Ablution & Minaret, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 64, Rue Dark el Garriere (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 32, Mosquée Mouhamed Aly, Interieur, 19th century

Artist: Adja Yunkers (American) 1900 - 1983;
Printer: Paul M. Maguire, Inc. (American) ; Publisher: Smith Andersen Editions (American)
Chalice, 1981

Artist: Adja Yunkers (American) 1900 - 1983; Printer: Paul M. Maguire, Inc. (American) ; Publisher: Smith Andersen Editions (American)
Immoblie Sun, 1981

Alexander Calder (American) 1898 - 1976
Untitled (Rabbit), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Rooster), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Three Monkeys), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Three Monkeys), mid 20th century

Artist: Richard Estes (American) 1932 - ; Publisher: Editions Domberger (German) active late 20th century
Salzburg Cathedral, 1982

Artist: Bernard Maybeck (American) active mid 20th century; Artist: Julia Morgan (American) active early 20th century
Western Hills Memorial City, Lawndale, California (Project for Mrs. Annie Darbee), ca. 1939

Arthur Felig (Weegee) (American (?)) active mid 20th century
Sleeping Man in Doorway, ca. 1940

Stanley Hoyt (American (?)) active early 20th century
I. Golden for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Poppy Club Masquerade Ball Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Stratton's Apparel Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
O.F.C. Whiskey Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Aloha ClubMasquerade Ball Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Byron Mauzy Pianos Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Kelleher & Brown Iriash Tailors Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Chas. T. Conlan for Police Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Cary Safes Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Corby's Canadian Whiskey Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Roos Bros., Imperiales Cigarettes Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Elect Joseph E. O'Donnell Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Theo Planz, Tailor Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
G.A. Buell Co. Mill Work Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Yosemite Lager Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Untitled (Street Scene with Cigar Store), ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Ed C. Harrison for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Weiland's Extra Pale Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
John Hunt for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Hub Clothiers Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Easton Additions to Burlingame Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Southern Pacific Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Vote for Thos. Finn for Sheriff Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Governors / Examiner Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Geo. H. Cabaniss for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Bohemian Beer Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Celebrate New Year's Eve in the Mission Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Vote for Henry A. Melvin, Judge Superior Court Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Lindholm's Stoves Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Federal Ranges Billboard, ca. 1907 - 1910

Artist: Andy Warhol (American) 1930 - 1987; Publisher: Random House (American) active 20th century
Andy Warhol's Index Book, 1967

Herbert Rose Barraud (English) 1845--1896
The Poet, Robert Browning, ca. 1888

Giorgio Sommer (Italian) 1834 - 1914
a) Venus by Canova, Villa Borghese, Rome; b) Baths of Caracalla, Rome, ca. 1870

Artist: Wolfgang Behl (German) b. 1918; Author: C.F.W. Behl (German) active 20th century
Publisher: Verlag Viernheim (Swiss) active 20th century
Adonis und Aphrodite, 1961

Artist: Siegmund v. Suchodolski (Austrian (?)) active early 20th century
Publisher: Verlag Gerlach and Wiedling (Austrian) active early 20th century
31. Deutsche Schwante, ca. 1910

Artist: DeLoss McGraw (American) 1945 - ; Authors: Gary Soto (American (?)), Robert Pinsky (American (?)), Czeslaw Milosz (Polish), Robert Hass (American (?))
Stories Are Horizontal Pictures, 1991

Artist: Robert Cremean (American) active 20th century; Makers: David Brock (American) active 20th century, David Renner (American) active 20th century; Publisher: Brighton Press (American) 1977 -
Procustes Inn Register: Monologue of the Traveller, Monologue of the Guest, 1994

Peter Kuckei (German) b. 1938
Untitled, 1993

Peter Kuckei (German) b. 1938
Untitled, 1993

Peter Kuckei (German) b. 1938
Untitled, 2001

Peter Kuckei (German) b. 1938
Untitled (China Basin), 1995

Artist: Peter Kuckei (German) b. 1938; Author: Yan Geling
Peter Kuckei San Francisco, 1995

Dennis Leon (American) 1933 -
Harrison Lake #4, 1987

Dennis Leon (American) 1933 -
Onestone #8, 1988

Rembrandt Harmensz van Rijn (Dutch) 1606 - 1669
Saint Jerome in a Dark Chamber, 1642

Matt Phillips (American) b. 1927
Untitled (Seated Female Nude), 1984

John Friedlander (French) 1912 -
L'Herbier, mid 20th century

Anonymous (Indian)
Untitled (Portrait of a Royal Personage), 18th century

Artist: Grisha Bruskin (American) 1945 -; Publisher: Christopher Sweet / Marlborough Graphics (American) ; Author: Lev Rubinstein (Russian)
Another Name / General Instruction, 1993

Artist: William Hogarth (British) 1697 - 1764; Artist: Luke Sullivan (Irish) 1705 - 1771
Moses Brought to Pharaoh's Daughter, 1752

Jacques Lipchitz (French) 1891 - 1973
Head of a Woman, ca. 1930 - 1939

Artist: Félix Bracquemond (French) 1833 - 1914; Printer: André Salmon (French) 1850 - ; After: Jean-Baptiste-Camille Corot (French) 1796 - 1875; Publisher: Gazette des Beaux-Arts (French)
Le Lac, early 20th century

Muriel Hudson (American) active 20th century
California Landscape, ca. 1930 - 1939

Artist: Arthur Pond (English) 1705 - 1758; After: Parmigianino (Francesco Mazzola) (Italian) 1503 - 1540
Group of Five Figures, 1734

Artist: Jean-Louis-André-Théodore Géricault (French) 1791 - 1824; Artist: Charles Louis Lesaint (French) b. 1795; Printer: Godefroy Engelmann (French) 1788 -
Plate 150, Église de Saint Nicolas from the series Maritime, Rouen, 1823

Artist: Percy Gray (American) 1869 - 1952;
Printer: Laura Lengyel (American) active late 20th century
Untitled (Tree on Cliffs Overlooking Ocean), 2000

Leigh Hyams (American) 1936 -
Eighteen Waterfalls, 2001

Lyonel Feininger (American) 1871 - 1956
Untitled (Cottage Garden), 1902

Artist: Leonard Baskin (American) 1922--2000; Publisher: Editions Medicina Rara (American) ; Printer: Curwen Press, Ltd. (English) active 20th century
Ars Anatomica: A Medical Fantasia in Thirteen Drawings, 1972

Artist: Yuri Kuper (British, b. Russia) 1940 - ; Printer: Atelier Bordas (French)
Estampologia, 2000

Russia
Lenin, 1920

Russia
Contemporary Architecture (CA2), 1929

Artist: Henri Matisse (French) 1869 - 1954; Publisher: Editions du Chene (French)
Visages, 1946

Jack Welpott (American) active mid 20th century
Sharon Moore, ca. 1965

Artist: Yozo Hamaguchi (Japanese) 1909--2000; Publisher: Vorpal Gallery (American)
Untitled (Nut), late 20th century

Richard Smith (British) 1931 -
Untitled (Abstract with three sheets of paper hanging), 1975

John Friedlander (French) 1912 -
L'Oiseau Rouge, 1960

John Friedlander (French) 1912 -
Untitled (Abstract with Green and Black Fish / Birds), mid 20th century

Eduardo Chillida (Spanish) 1924 -
Untitled (Black and White Abstract), mid 20th century

Gunther Fruhtrunk (German)
Untitled (Black, Red and Blue Abstract), mid 20th century

Artist: Peter Kuckei (German) b. 1938; Printer: Thomas Wojak (Amertican (?)) active late 20th century
Peter Kuckei, San Francisco, 1993

Percy Gray (American) 1869 - 1952
Farm Buildings after the Rain, ca. 1908

Percy Gray (American) 1869 - 1952
Vase of Roses, ca. 1940

Percy Gray (American) 1869 - 1952
Young Woman with a Coral Necklace, ca. 1911

Textiles

China
Fragment of a Lampas; T'ang Dynasty, 7th - 10th century

Persia
Fragment of a Lampas; Ilkhanid Dynasty, 13th - 14th century

China
Fragment of a Collar, 10th - 12th century

Designer: Candace Kling (American) active late 20th century;
Designer: Fred Kling (American) active late 20th century
Women's Long Skirt,

White Duck Workshop (American) active 20th century
Maxidress,

Anonymous (American)
Empire-style Maxidress,

Turkmen, Ersari, Afghanistan, Asia
Carpet Fragment, 19th century

Turkmen, Kashgar, China, Asia
Carpet, late 19th century

Anonymous (English)
Brisé Fan, ca. 1810

Colamina (French)
Franco- Prussian War Commemorative Fan, ca. 1871

Anonymous (American)
Moxie Advertising Fan, ca. 1925

Anonymous (American)
St. Louis World's Fair Commemorative Fan, ca. 1904

Claude Montana (French) active late 20th century
Jacket and Matching Earrings, ca. 1984

Thierry Mugler (French) active late 20th century
Day Dress, ca. 1988

Gibson Palermo (American) active late 20th century
Jacket, ca. 1985

Anonymous (American)
"Ice Cream" Belt, ca. 1970

Anonymous (Canadian)
Man's Two-Piece Suit, ca. 1972

Hardy Amies (English)
Man's Tie, ca. 1972

Anonymous (American)
Psychedelic-patterned Man's Tie, ca. 1969

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Two Panels from a Woman's Blouse (huipil), 20th century

Maker: Johnson, Stephens & (?) Shoe Company (American);
Owner: L. Futterman (American)
Pair of Women's Laced Boots, ca. 1915

Maker: Johnson, Stephens & (?) Shoe Company (American) ; Owner: L. Futterman (American)
Pair of Women's Laced Boots, ca. 1915

Turkmen, Yomut sub-group, Asia
Main Carpet, 18th century

Guatemala
Headband (cinta), 20th century

Guatemala
Headband (cinta), 20th century

Guatemala
Headband (cinta), 20th century

Guatemala
Belt, mid 20th century

Guatemala
Huipil Fragment, 20th century

Mexico
Album Popular de Punta de Cruz (Embroidery Pattern Book), 1974

Mexico
Album de Punta de Cruz (Embroidery Pattern Book), 1972

Guatemala
Backstrap Loom, ca. 1970

Guatemala
Backstrap Loom, ca. 1970

Designer: Claire McCardell (American) b. 1905; Maker: Townley (American)
Popover Dress and Coat, ca. 1952 - 1956

Claire McCardell (American) b. 1905
Woman's Coat, ca. 1952 - 1956

The White House (American) active 20th century
Women's Mules, ca. 1950 - 1959

Herbert Levine (American) active mid 20th century
Woman's Pumps, ca. 1960 - 1965

Herbert Levine (American) active mid 20th century
Women's Handbag, ca. 1960 - 1965

Anonymous (American)
Evening Shoes, ca. 1925 - 1929

Cristobal Balenciaga (Spanish) 1895 - 1972
Hair Ornament, ca. 1960 - 1969

Anonymous (American)
Del Monte Catsup Barbecue Apron,

Anonymous (American)
Man's Shirt,

Anonymous (American)
Women's Playsuit,

Roger Vivier (French) active 20th century
Women's Pumps,

Gianfrance Ferre (Italian) active late 20th century
Women's Sandals, ca. 1980 - 1989

Evins (American) active 20th century
Women's Thigh-High Boots,

Ransohoff's, San Francisco (American)
Evening Dress, ca. 1930

Designer: Nina Foley (American) ; Shoemaker: Sommer and Kaufmann (American)
Wedding Dress with Four - Piece Veil, Orangeblossom Headdress, Stockings, Shoes, ca. 1920 - 1929

Anonymous (American)
Evening Dress with Attached Belt, ca. 1930 - 1939

Brownlee Milliners (American)
Cloche Hat, ca. 1920 - 1929

Anonymous (English)
Boy's Cloche-style Hat, ca. 1930 - 1939

Maker: Anonymous (American) ; Shoemaker: Cammeyer (American)
Boy's Daytime Ensemble (Coat, Shorts, Cap, Shoes), ca. 1930 - 1939

Maker: Anonymous (American) ; Shoemaker: Cammeyer (American)
Boy's Daytime Ensemble (Coat, Shorts, Cap, Shoes), ca. 1930 - 1939

Anonymous (American)
Boy's Ensemble (Shorts and Sweater), ca. 1930 - 1939

Anonymous (American)
Boy's Ensemble (Shorts and Sweater), ca. 1930 - 1939

Anonymous (American)
Child's Dress, early 20th century

Anonymous (American)
Child's Coat with Two Matching Bonnets, early 20th century

Anonymous (Indian)
Shoes, 20th century

Mongolia
Mat (mu-sen), 19th - 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Peru
Tie or Belt, 6th century - 4th century BC

Peru
Tie or Belt, 6th century - 4th century BC

Peru
Band or Garment Fragment, 6th century - 4th century BC

Peru
Loincloth, 6th century - 4th century BC

Peru
Loincloth Fragment, 6th century - 4th century BC

d'Anjou (Canadian)
Wedding Dress with Headdress, 1948

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PLANNING COMMISSION
MOTION NO. 16338

ADOPTING FINDINGS RELATED TO GENERAL PLAN REVIEW AND SECTION 101.1 PRIORITY PLANNING POLICIES FOR THE PROPOSED NEW M.H. DEYOUNG MUSEUM LOCATED IN THE MUSIC CONCOURSE IN GOLDEN GATE PARK, LOT 1 IN ASSESSOR'S BLOCK 1700.

PREAMBLE

Applicant, the Corporation of the Fine Arts Museums, (the "Project Sponsor") is seeking the approvals necessary for the construction of the new M.H. de Young Museum (the "Project") on the site of the existing M.H. de Young Museum in the Music Concourse in Golden Gate Park, after demolition of the eight existing buildings that comprise the de Young Museum. The Project is located at 75 Tea Garden Drive in Golden Gate Park; Lot 001 in Assessor's Block 1700. The Planning Department or Planning Commission must review the Project for consistency with the City's General Plan and with the Eight Priority Planning Policies set forth in Planning Code Section 101.1. On October 17, 2000 the Project Sponsor filed application with the Planning Department for review of the Project's consistency with the General Plan and the Priority Planning Policies contained in Planning Code Section 101.1. The Project is located in a P (Public Use) District and an OS (Open Space) Height and Bulk district.

On December 7, 2000 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing and certified the Project's Final Environmental Impact Report in Motion No. 16039, adopted findings pursuant to the California Environmental Quality Act ("CEQA") in Motion No. 16040, adopted findings that additional new shading caused by the new M.H. de Young Museum would not be significant or adverse in Motion No. 16041, and adopted findings related to General Plan review and Section 101.1 Priority Planning Policies in Motion No. 16042.

In January 2001, a court challenge to the original Final EIR, certified on December 7, 2000 by the Planning Commission, and the process by which the Final EIR was certified, was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR. The Writ also set aside the City's project approval actions, including the actions taken by the Planning Commission on December 7, 2000 subsequent to the December 7, 2000 Final EIR certification.

The Board of Supervisors held a hearing on the appeal of the December 2000 Final EIR on

August 20, 2001. The Project Sponsor had revised the design of the Project and the Board of Supervisors directed that (1) additional environmental review be undertaken to review the revisions to the Project, (2) any errors in the Final EIR be corrected, and (3) the EIR should provide expanded information on historic resources. The Planning Commission certified the revised Final EIR on December 6, 2001 in Motion No. 16291. The Board of Supervisors affirmed the Planning Commission's certification of the revised Final EIR on January 14, 2002 in its Motion No. MO2-8.

On January 24, 2002, the Commission adopted findings in Motion No. 16336 in connection with its consideration of this action under CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, and made certain findings in connection therewith, and adopted a mitigation monitoring program, which findings and program are hereby incorporated by this reference as if fully set forth herein.

On January 24, 2002, the Commission adopted findings in Motion No. 16337 stating that shadow cast by the project on Golden Gate Park as a whole is deemed de minimus, and project shadow on elements of the Park is not adverse.

Prior to taking any action on the Project, the Planning Commission has reviewed and considered the information in the revised Final EIR, has reviewed the revised Project, has heard and considered testimony presented to it at the public hearing and has further reviewed and considered other information pertaining to the Project contained in the Department files.

FINDINGS

1. The above recitals are accurate and constitute findings of the Planning Commission.

2. The project site is in Golden Gate Park within a P (Public Use) zoning district and an OS (Open Space) Height and Bulk District; Assessor's Block 1700, Lot 1, bounded to the north and east by John F. Kennedy Drive, to the south by Tea Garden Drive with the Music Concourse beyond, and to the west by the Hagiwara Japanese Tea Garden.

3. The project site is presently occupied by an eight-building complex totaling approximately 230,000 square feet, which comprise the M.H. de Young Museum and the Asian Art Museum in Golden Gate Park.

4. The project would demolish the de Young and Asian Art Museums and reconstruct the de Young Museum in a new building on the existing site, northeast of the current building complex. The Asian Art Museum will relocate to the Civic Center. The new De Young proposal comprises two main levels above grade and one level below grade, increasing gallery and exhibition space at the site from the existing 37,000 square feet to about 75,000 square feet, and also includes a tower element at the northeast corner of the building.

5. The proposed footprint of the building, including the embossed and perforated copper skin, is

about 260 feet by 430 feet, with a roofline that rises in a gentle curve from a height of 33 feet at the western eave to a highpoint of 48 feet then down to its eastern eave at about 38 feet above grade. The tower element would be 144 feet high, with a floor plate (including stairs) approximately 41' by 93' at its third-story base, increasing at each level to a maximum of 41' by 108' at the top. The axes of each floor of levels three through nine rotate several degrees clockwise in plan from each floor immediately below, about 30 degrees total, producing walls with double-curved surfaces. The axes of the tower's lowest floor align with the main building, and the top floor axes of the tower align with the street grid outside of the Park.

6. **Section 234.1** of *The San Francisco Planning Code*, APrincipal Uses Permitted, P Districts,≅ Part (b), requires that public structures and uses of the City and County of San Francisco, and of other governmental agencies that are subject to regulation by this Code, be in conformity with the Master (General) Plan.

7. **Section 290** of *The San Francisco Planning Code*, AHeight and Bulk Limits for Open Space Districts,≅ requires that the height and bulk of buildings and structures in the OS District shall be determined in accordance with the objectives, principles and policies of *The General Plan*, and no building or structure or addition thereto shall be permitted unless in conformity with *The General Plan*.

8. Recreation and Open Space Element (R.O.S.)

R.O.S. Objective 1 - *Preserve Larger Areas of Open Space Sufficient to Meet the Long-range Needs of the Bay Region.*

> ***R.O.S. Policy 1.2:** Make open space lands already in public ownership accessible to the public for compatible recreational uses.*

! The project will improve the accessibility of this recreational and cultural institution, by providing more public entries meeting current Building Code Access requirements, and by enabling visitors to the Park to stroll through the Museum, admission-free, to experience some exhibits and collections, to enjoy the landscaped courts within the building, and to visit the top of the Education Tower for a new vistas of the City and surrounding water which are presently unavailable and will be unique.

R.O.S. Objective 2 - *Develop and Maintain a Diversified and Balanced Citywide System of High Quality Public Open Space.*

> ***R.O.S. Policy 2.2:** Preserve existing public open space.*

! The project will not reduce nor negatively impact any existing open space. The project will create approximately 80,000 square feet of additional open space and landscaped area around the Museum.

! The reduction of the building footprint and the relocation of the west wall of the new Museum approximately 180 feet from the Japanese Tea Garden create a new public amenity open space - a Sculpture Garden which allows Park visitors to experience the Museum=s art in the Park=s open space.

! On the northeast side of the building, removal of the surface parking lot will allow for the creation of another open space public amenity -- the Garden of Enchantment, a children's garden incorporating the relocated and reconstructed Pool of Enchantment, historic palm trees, sculptures and a teaching area.

R.O.S. ***Policy 2.3:*** *Preserve sunlight in public open space.*

While the project will create some new shadow, this new shadow will not be significant. The project shifts the existing annual shadow almost entirely off the historic Japanese Tea Garden, and significantly reduces shading on the Concourse. New shadow cast across Kennedy Drive over the Children=s playground is blocked by the existing tree canopy and is not considered an adverse impact.

! The Concourse will experience some new shading for a few late afternoon hours in mid-summer, when the weather is often foggy. This new shadow, cast largely by the Education Tower, will occur primarily during winter months in late afternoon shortly before sunset when the weather conditions, including cloud cover, cold and rain sometimes restrict use of the Park.

! Other new shadow will be of limited duration and, other than the areas discussed above, much of it would be cast on areas not used for recreation such as roadways.

! Many areas of new shadow will fall on ground already in shadow from existing major trees which reach maximum heights of between 90 feet and 140 feet and which are densely planted in the project area.

R.O.S. ***Policy 2.4:*** *Gradually eliminate non-recreational use in parks and reduce automobile traffic in and around public open spaces.*

! The analysis in the revised FEIR found that the project will have no significant impacts on traffic in and around the Concourse area.

R.O.S. ***Policy 2.6:*** *Make open space accessible to people with special needs.*

! All new open space created by the project will be accessible to people with special needs.

! The Garden of Enchantment, a children=s garden containing the reconstructed Pool of Enchantment, will be accessible via a new path from the Museum site through the existing pedestrian tunnel beneath Kennedy Drive connecting the new garden area to the existing Children=s Playground.

R.O.S. Policy 2.9: *Maintain and expand the urban forest.*

! The Golden Gate Park Master Plan identifies protection of the mature tree canopy and reforestation to replace aging or unhealthy trees as an essential element for the on-going health of the Park.

! Major trees in the vicinity of the Museum will be protected during the buildings= demolition and construction based upon the advice and monitoring of an arborist and in consultation with the Recreation and Park Department staff.

! The project will provide for extensive planting of new trees in areas currently without major trees. It further will provide for planting of new trees to supplement and enhance the existing canopy, particularly in areas where some very mature trees may in the near future reach the end of their life spans.

R.O.S. Policy 2.10: *Develop a master plan for Golden Gate Park. Acknowledge Golden Gate Park's contribution to the diversity of cultural and recreational activities available to residents of San Francisco and the Bay region.*

! The de Young Museum is a recreational and educational use, acknowledged in the Golden Gate Park Master Plan, created in response to this *General Plan* Policy, to be an important contributor to the diversity of recreational, cultural and educational uses available to the community and the Bay region in the Park.

R.O.S. Objective 4 - *Provide Opportunities for Recreation and the Enjoyment of Open Space in Every San Francisco Neighborhood.*

R.O.S. Policy 4.3: *Renew and renovate the City=s parks and recreation facilities.*

! Reconstruction of the de Young Museum will result in a renewal and revitalization of this site, with benefit to adjacent elements and uses in the Park.

! The project will provide for extensive planting of new trees in areas currently without major trees. It further will provide for planting of new trees to supplement and enhance the existing canopy, particularly in areas where some very mature trees may in the near future reach the end of their life spans.

9. **Urban Design Element (U.D.)**

U.D. Objective 1 - ***City Pattern: Emphasis of the characteristic pattern that gives to the City and its neighborhoods an image, a sense of purpose and a means of orientation.***

U.D. Policy 1.1 *- Recognize and protect major views in the city, with particular attention to those of open space and water. Overlooks and other viewpoints for appreciation of the city and its environs should be protected and supplemented, by limitations of buildings and other obstructions where necessary and by establishment of new viewpoints at key locations.*

! Although the project=s tower will be visible from high points around the City and from within the Park, the project will not obstruct any major viewpoints. It supplements viewpoints by establishing a new outlook at a key location (near the Music Concourse of Golden Gate Park) with unique views of the Park, downtown and other neighborhoods of the City, the Golden Gate Bridge and the ocean available to the public from the top floor of the tower.

U.D. Policy 1.2 *- Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.*

! The project recognizes and reinforces the existing street pattern within the Park by aligning the Museum=s exterior walls and the Tower base with Tea Garden Drive. The street grid outside the park is acknowledged by the orientation of the Education Tower. The axes of the Tower floors twist as they rise, so that the top floor with its observation area will be aligned with the City grid, thereby recognizing the street patterns outside the Park and allowing visitors to perceive the connection.

U.D. Policy 1.3 *- Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts. Buildings which collectively contribute to the characteristic pattern of the city are the greatest variable because they are most easily altered by man. Therefore, the relationships of building forms to one another and to other elements of the city pattern should be moderated so that the effects will be complementary and harmonious. Individual buildings and other structures should stand out prominently in the city pattern only in exceptional circumstances, where they signify the presence of important community facilities and occupy visual focal points that benefit from buildings and structures of such design.*

! The de Young Museum is one of the most important community facilities in San Francisco. The de Young plays a primary role in the civic, cultural and educational life of the City through its popular exhibitions, diverse art collections, educational programs, and as a center for community celebrations and events. It also is a main element of the diverse recreational and educational offerings of Golden Gate Park. It is an important aspect of the City's commitment to the arts. Therefore, as a significant cultural asset of San Francisco, this project is one of the exceptional circumstances where the prominence of an individual building in its context may be appropriate.

! The Academy of Science is being redesigned and will undergo significant modification over the next few years. The de Young Museum is sited north from the Academy along a main cross-axis of the Concourse. The spatial and stylistic relationships between these buildings need more definition.

! However, the proposed building, as currently expressed in its schematic form, does not have a strong relationship to the Academy of Sciences across the Music Concourse, nor to the Spreckels Band Shell within the Concourse, major structural elements of the setting. Further refinement of the design must address this issue.

! Therefore, as the design of both of these highly significant structures progresses from the Schematic Phase through Design Development and into Construction, the Department will continue to work with both project sponsors to ensure that appropriate urban design solutions are reached.

U.D. Policy 1.4 *- Protect and promote large-scale landscaping and open space that define districts and topography. New building development should respect existing landscaping and avoid displacing or obscuring it. In the event that such landscaping must be displaced or obscured, a strong effort should be made to replace it with new landscaping of equal or greater prominence.*

! The project will be planned in consultation with the Recreation and Park Department to ensure consistency with the Golden Gate Park Master Plan objectives and to respect existing landscaping. The project sponsor has hired an arborist recommended by the Recreation and Park Department to assist both in evaluation of existing trees and in the development of tree protection methods during construction.

! Plans provide for the retention of mature trees, including those along the perimeter of the site to the north and along Kennedy Drive. Plans also provide for enhancement of the existing tree canopy pursuant to the reforestation objectives of the Golden Gate Park Master Plan. The historic palm trees along Tea Garden will be retained as will other landscape elements including shrubs and understory plantings.

! The project also will create two new landscaping and open space features totaling over 80,000 sq. ft. on areas currently occupied by existing buildings. The previously-mentioned new sculpture garden between the Museum and the Japanese Tea Garden and a new Children's Garden to the north of the building (which incorporates the relocated and reconstructed Pool of Enchantment, Palm Grove and a teaching circle for children's programs and will have pedestrian access via tunnel to the children's playground) will be created.

! However, the proposed schematic site plan does not address in sufficient detail how the necessary transition from the formal, Beaux Arts-style Music Concourse to the modernist, informal design of the Museum will be accomplished. The edge of the project site at Tea Garden Drive should acknowledge and reinforce the Music Concourse rather than recede from it.

! Therefore, as the design of the landscaping and paving progresses from the Schematic Phase through Design Development and into Construction, the Department will continue to work closely with the project sponsor to ensure that appropriate urban design solutions are reached.

U.D. Policy 1.6 *- Make centers of activity more prominent through design of street features and by other means.*

! The Museum=s main entry, fronting the Music Concourse, is accented by the oblique flanking walls opening to a landscaped court beyond, which serves to Ainvite≅ visitors pedestrians in from the street.

! Further refinement of the landscape design at the edge of the site at Tea Garden Drive in necessary to emphasize the entry plaza at the pedestrian level.

! The Museum will also be identified as a center of activity by the Education Tower.

U.D. Policy 1.8 *- Increase the visibility of major destinations areas and other points for orientation. In travel about the city, the ability to see one's destination and other points of orientation is an important product of the city pattern. Such an ability should be fostered in public and private development.*

! The new Education Tower will be a clearly identifiable landmark, visible from high points around the City and from the evirons of the Park. The Tower will serve as an orientation point that marks both the Music Concourse area and the Museum within the overall city pattern.

U.D.* Objective 2 - *Conservation: Conservation of resources that provide a sense of nature, continuity with the past, and freedom from overcrowding.

> ***U.D. Policy 2.2*** *- Limit improvements in other open spaces having an established sense of nature to those that are necessary, and unlikely to detract from the primary values of the open space. Facilities placed in parks and other open and landscaped areas should add to rather than decrease their recreation and open space values. Where new facilities are necessary in these parks and open spaces, they should be sited in areas that are already partially developed in preference to areas with a greater sense of nature.*

! The M. H. de Young Memorial Museum has been in Golden Gate Park for over 100 years and is recognized as an important recreational and educational resource of the Park. The new building furthers this tradition and does not reduce or limit the recreation and open space within the Park, but rather adds new landscaped areas to the recreational opportunities of the Concourse.

! The de Young's site in Golden Gate Park on the Music Concourse is identified in the Golden Gate Park Master Plan as an area dedicated to civic activities and the cultural institutions, and in accord with this General Plan is in a developed area, fronting on the formal Music Concourse.

! The floor plan promotes the integration of indoor and open space, with interior landscaped courts and several entrances which allow pedestrian circulation through the museum free of charge,.

> ***U.D. Policy 2.4*** *- Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.*

! The existing de Young Museum consists of eight buildings ranging from 1894 B 1964. The buildings are not listed in City, state or federal historical registries. The original Spanish style exterior ornamentation was replaced in 1949 with a modernistic stucco finish. The existing eight museum buildings have been added to and modified over time and do not embody a unified architectural style.

! After damage caused to the museum in the Loma Prieta earthquake in 1989, the building exterior has been braced with a system of exposed exterior steel, concrete buttresses and steel roof plates. The substantial alterations of the existing museum structures, seismic problems and corrective bracing have compromised the architectural integrity of the structures over time.

! The existing buildings also do not embody any distinctive characteristics of a type, period, region, or method of construction or represent the work of an important creative individual or possess high artistic values. Nor have they yielded any information important to prehistory or history.

! The primary historical value of the museum is as an institution. The institution and its collections will remain at their present site.

! Golden Gate Park's potential eligibility for listing on the National Register is acknowledged. However, the new de Young museum should not adversely impact Golden Gate Park's potential for listing on the National Register of Historic Places or as an Historic Landscape. The draft application for the National Register prepared by the Recreation and Park Department identifies, among others, the museum uses as historical functions in the Park. Although listed in a "contributing" category, the museum use and not the structures is identified as the contribution to the historic district or landscape. This historical function would continue with the Project.

***U.D. Policy 2.6** - Respect the character of older development nearby in the design of new buildings.*

! While this policy applies primarily to the built environment, and this setting is less urban than is typical for the City, this criterion could be applied to this project based on the importance of the relationship between the de Young and the other main elements of this area of the Park, including the Academy, the Spreckels Band Shell and the Concourse itself.

! The benefit to the Japanese Tea Garden of the new open space created by the project have been discussed.

! The need for more details and refinement of the site design in order to assure an acknowledgment of the Music Concourse was also discussed earlier.

***U.D. Policy 2.**- Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.*

! The Music Concourse, with the de Young Museum and the Academy of Science, is one of San Francisco's unique areas. The overall form of the site is determined by the street pattern within the Park and by the Music Concourse itself.

! The current de Young Museum and the Academy of Science buildings do not markedly provide strong definition to the edges of the Concourse. The proposed de Young building in its schematic form, respects but does not strengthen the Music Concourse form. In design development, and in concert with the new design for the Academy of Science, the de Young design must serve to define the Concourse's edges, and must create a dialogue between the museums. The proposed project provides an opportunity to improve and strengthen the existing weak relationship among these major elements.

U.D. Objective 3 - Major New Development: ***Moderation of major new development to complement the city pattern, the resources to be conserved and the neighborhood environment. By tradition in San Francisco, as in other great cities of the world, unusual building forms and monumental scale have been reserved for buildings with the greatest significance to the community. The buildings characterize the mood and institutions of the city, and by their quality and nature express the city's aspirations to the world at large.***

U.D. Policy 3.1 - *Promote harmony in the visual relationships and transitions between new and older buildings.*

! As with Policy 2.6, this policy applies primarily to the built environment, and although this setting is less urban than is typical for the City, this criterion should be applied to this project based on the importance of the relationship between the de Young and the other main elements of this area of the Park, including the Academy, the Spreckels Band Shell and the Concourse itself.

! This project promotes harmony in the relationships of the structures and landscape that form important elements in the Music Concourse area by improving the existing spatial relationships of development surrounding the Concourse. Alignment of the main entry with a significant cross-axis of the Concourse, preservation of the existing distance to the Academy, and the new sculpture garden buffer between the Museum and the Tea Garden work to achieve this objective.

! The finishes proposed for the new building will be natural materials, (glass, wood and copper) which could be harmonious with the surrounding development.

! The use of the copper coil material proposed in the earlier submittal has been replaced in the design, at this schematic phase, with embossed and perforated copper sheet. The Department will continue to work with the Project Sponsor to refine and detail the copper as an outer skin, and to refine the method of attachment that metal, the ability to be maintain it and the ease of cleaning of any interstitial space over the life of the project.

! The use of wood, proposed as framing around certain window openings, on a significant public building is unusual and requires further study.

! While the proposal describes a building of great visual character, further determination of details is needed to assure compatibility with existing development in the Park.

U.D. Policy 3.2 *- Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of the public importance. Unusual shapes, especially in large buildings, should therefore be reserved for structures of broad public significance such as those providing community services.*

! The de Young Museum is an institution of great civic and public importance that provides extensive community services with its arts and education programs and exhibitions. The Museum building should reflect its public importance and should create a unique identity through its architecture.

! The project embraces the opportunity to be a distinctive and an acclaimed structure. The organic floor plan is an excellent response to the site. The Education Tower, as previously discussed, creates a readily identifiable image for the Museum and provides an visible orientation point. The unusual finish materials are also distinctive.

U.D. Policy 3.3 *- Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations. At locations of prominence, such as parks, the quality of building design is of special significance, and special efforts should be made to promote the best architectural solutions in both public and private buildings. In such solutions, the positive potentials of the site should be emphasized.*

! The de Young Museum an important public institution in the Concourse area of Golden Gate Park, a prominent public area. The project sponsor, their design professionals, and the Department are all committed to producing a high quality design.

! The project embraces the opportunity to be a distinctive and an acclaimed structure. To succeed, the design must be skillfully executed, with particular attention paid to the final detailing and specifications, and to construction methods and quality. The Department is convinced that the project sponsor is committed to achieving this level of design and will continue to work with the Sponsor as the design evolves.

U.D. Policy 3.4 - *Promote building forms that will respect and improve the integrity of open spaces and other public areas. Large buildings and development should, where feasible, provide ground level open space on their sites, well situated for public access and for sunlight penetration.*

! The Project will result in the creation of approximately 80,000 square feet of additional landscaped and open space area around the museum building. This will be accomplished through construction of the replacement building on the same site as the existing museum, but with a reduced building footprint. The new open space will accommodate new public amenities through a sculpture garden that will combine the Museum program with the Park experience. On the northeast side of the building, removal of the surface parking lot will allow for the creation of another open space public amenity: the Garden of Enchantment, a children's garden incorporating the relocated and reconstructed Pool of Enchantment, historic palm trees, sculptures and a teaching area. These new open space areas will be accessible to persons with disabilities or special needs.

! Additionally, the new building incorporates open courtyards in the building providing sunlight to penetrate the interior spaces. The roof overhang over the terrace on the southwest side of the building will be at least 50% open to allow sunlight the public seating areas below.

U.D. Policy 3.5 - *Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.*

! The height of the proposed Museum building is not significantly different than the pattern of the existing Museum structures, which range between 26 to 42 feet high, or from the Academy of Science building, approximately 40 feet high.

! The existing tower is 135 feet high at its highest point and the new tower will be 144 feet above grade, and approximately 38 feet by 91 feet in plan. As discussed earlier, the new tower will provide an important visual landmark from outside the Park.

U.D. Policy 3.6 - *Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.*

! The bulk of the new building, excluding the tower, is not significantly different than the existing. The length of the façade facing the Concourse will be reduced from the existing 503 feet to approximately 423 feet.

! The apparent bulk of the Tower will vary depending upon the observer=s viewpoint as a result of its curving form. From some views the bulk will be minimized since the portion of the tower visible would be viewed end-on or tapering toward the top; however, from other vantages the visible portion of the tower will be viewed obliquely, thus emphasizing its bulk as it rises.

10. The Arts Element (T.A.)

T.A. Goal I -- Support and nurture the arts through city leadership.

T.A. Objective I.1*: Recognize the arts as necessary to the quality of life for all segments of San Francisco.*

T.A. Policy I.1.1: *Promote inclusion of artistic considerations in local decision-making.*

T.A. Policy I.1.3: *Increase public awareness of the arts in San Francisco by greater promotion of existing art programs and services in the community and schools.*

T.A. Policy I.1.4: *Provide access to the creative process and cultural resources for all neighborhoods, cultural communities, and segments of the city and its populations.*

! The de Young Museum has contributed to the quality of life for residents of San Francisco and of the Bay Region. Its diverse collections, educational programs and exhibitions have been a focal point of arts and arts education in San Francisco. The project will not only maintain this contribution but will increase it. The new building's increased space and up-to-date facilities will be accessible to all of the diverse communities of The City. It will support existing educational programs of San Francisco public schools by providing areas specifically designed for these programs, consolidated into a "visitor friendly" facility. The new Museum's increased public spaces, many accessible without admission fees, will increase its accessibility to all. The new Museum will increase awareness of art programs and will serve as an important symbol of San Francisco's commitment to education and the arts.

Objective I.2: Increase the contribution of the arts to the economy of San Francisco.

! The de Young Museum has been a major contributor to the economy of San Francisco as the major venue for important international exhibitions. Tourists and Bay Area visitors see the de Young and one of the most important arts and cultural institutions in the Bay Area and it is often the basis for a visit to San Francisco, particularly for temporary exhibitions. The proposed project will not only maintain this contribution but will increase it. The de Young lost its ability to host major temporary exhibitions in 1997 due to the poor seismic condition of the buildings. The new building project will allow the institution to regain its position as one of the pre-eminent destinations on the west coast for important international exhibitions.

! The project is being designed by a world-renowned architecture firm and will be a unique building for the Museum, the City and the nation. It will attract new visitors to the Museum based upon its unique architecture alone, increasing the visibility of the Museum and the City worldwide.

Goal III -- Recognize and support individual artists and arts organizations. A combination that is vital to a thriving arts environment.

Objective III.8: Strengthen the contribution of arts organizations to the creative life and vitality of San Francisco.

Policy III.8.2: *Assist in the improvement of arts organizations' facilities and access, in order to enhance the quality and quantity of arts offerings.*

! The project will enable the de Young Museum to continue to serve San Francisco for the next 100 years. It will expand and improve both the quantity, diversity and quality of programs that the Museum can provide. It will allow the Museum to regain its financial stability to ensure its continued contribution to this community.

Goal IV -- Increase opportunities for quality arts education.

Objective IV.9: Advocate and assist in providing arts education programming at all levels.

Policy IV.9.2: Strengthen collaborations among artists, arts organizations, and teachers, school administrators, and others responsible for arts curricula.

The de Young provides an extensive arts and education programs to support the public schools. The project will allow the Museum to increase space, by almost three times, devoted to education programs. In addition, these areas can be designed to meet the needs of both visiting school groups but also individual visitors and families. The Board of Education voted enthusiastically to support the new de Young project and specifically the Education Tower as important to the education of San Francisco's children and as a symbol of San Francisco's commitment to education and the arts.

Goal VI -- Enhance, develop, and protect the physical environment of the arts in San Francisco.

Objective VI.14: Support the continued development and preservation of artists and arts organizations' spaces.

Policy VI.14.2: Support and expand programs directed at enabling arts organizations and artists to comply with City building and safety codes and to rehabilitate arts spaces."

The current de Young Museum was evaluated by City Engineers and assigned the highest hazard rating in the event of a major earthquake. Due to its valuable art collections and the numbers of visitors it receives, it was identified as the highest priority for seismic strengthening of city buildings. The project will allow the de Young to provide not only the highest level of seismic protection but also to comply with current building and other safety codes.

11. **PRIORITY POLICY FINDINGS: Section 101.1(b)** of *The San Francisco Planning Code*, under AMaster Plan Consistency and Implementation,≅ establishes eight priority policies:

1. *That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.*

    ! The project will not displace nor disrupt neighborhood-serving retail uses. It will not impact resident employment or ownership of such businesses.

    ! The project may have a positive impact on the existing neighborhood serving retail uses. Visitors of the de Young Museum often frequent neighborhood retail establishments prior to or following a visit to the Museum. A revitalized Museum will enhance support of neighborhood retail activities.

2. *That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.*

    ! The project will have no impact on existing housing.

    ! The project will serve to conserve and protect neighborhood character by maintaining an important cultural resource which presently serves as both a neighborhood amenity and a city-wide resource.

    ! Without the project, the diversity of cultural and recreational opportunities which characterize Golden Gate Park will be diminished for Park users and for the neighborhoods adjoining Golden Gate Park.

3. *That the City's supply of affordable housing be preserved and enhanced.*

! The project will have no impact on the City's affordable housing supply.

4. *That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.*

! The project revised FEIR states that there will be no increase in commuter traffic and no increase in long-term parking demand. Therefore, the project will not impede the nine Muni bus lines and one rail line which serve the project area.

! Neighborhood streets and parking will not be burdened because short-term parking demand resulting from the Project (approximately 170 spaces on Saturday and 150 spaces on Sunday) can be accommodated through on-street parking within the Park in the Museum vicinity and further supply will eventually be available in the underground parking garage to be build under the Music Concourse area, a project planned by the Golden Gate Park Concourse Authority in accordance with Proposition J passed in 1998.

! The transportation analysis in the revised FEIR concludes that the project will not significantly impact the traffic, transit service, and parking for the Park and adjacent neighborhoods.

5. *That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.*

! The project will have no effect on industrial and service sectors.

6. *That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.*

! In 1993, the City conducted a survey and analysis of city-owned buildings and placed the de Young Museum in the highest seismic hazard rating category. It was deemed to be of the highest priority for correction due to the poor condition of its buildings, the numbers of people who use the facility, and the value of the city-owned art collections. Furthermore, in 1997, due to the poor seismic condition of the existing buildings, the museum lost its Federal Indemnification for the insurance of traveling exhibitions which has limited the museum's ability to host major exhibitions.

! Concern over safety of the existing museum buildings during seismic events, coupled with the economic infeasiblity of upgrading those buildings to current standards of seismic resistance, is one of the principal reasons for constructing an entirely new museum facility, one built to the highest seismic safety standards to protect both the visitors and the City-owned artwork housed in the building. Once completed, the new building will allow the Museum to regain its Federal Indemnification and its position as a venue for major traveling exhibitions.

7. *That landmarks and historic buildings be preserved.*

    - The revised FEIR states that the project will have not adversely affect landmarks or historic buildings, nor will it affect the eligibility of the Park or its elements from future listings as historic resources or landmarks.

    - The existing de Young museum is not listed in any local, state or federal inventory or register of historic resources. Nor has the de Young museum been determined eligible for listing in either the California Register or the National Register.

    - The existing buildings comprising the museum have been constructed, altered and remodeled over time, and the building exterior is braced with a system of exposed steel and concrete buttresses, along with steel roof plates. Former ornamentation on the tower and the building were removed due to structural concerns many years ago. The existing structures no longer retain their architectural integrity. Demolition of these structures will not result in the loss of an historic resource. They do not represent a cohesive overall architectural character. Nor will the demolition and construction of the new museum adversely impact the surrounding historic Park landscape, other features of the Music Concourse, or the Concourse as a whole.

    - The project sponsor has retained an arborist recommended by the Recreation and Park Department to advise the Contractor on protection measures for landscape elements of the Park during construction.

8. *That our parks and open space and their access to sunlight and vistas be protected from development.*

    - The new Museum does not increase developmental impacts on Golden Gate Park and open space the Park provides. The project increases the floor area of the Museum, while it reduces the footprint compared to the existing structures it will replace. A parking Variance, if granted, will eliminate paved surface parking, and will also return open space to the Park.

The amount of land dedicated to landscaped areas and open space will be increased by over 80,000 square feet, much of it for the Sculpture Garden and the Garden of Enchantment.

! While the project will create some new shadow, this new shadow will not be significant. The project shifts the existing annual shadow almost entirely off the historic Japanese Tea Garden, and significantly reduces shading on the Concourse. New shadow cast across Kennedy drive over the Children's Playground is blocked by the existing tree canopy and is not considered an adverse impact. (See Section 295 analysis above.)

! The new design will not block views or vistas.

DECISION

The Commission, after carefully balancing the competing public and private interests, after considering the Objectives and Policies of the *San Francisco General Plan*, and the *San Francisco Planning Code* Sections 101.1(b), 234.1(b), and 290, finds that the proposed de Young Museum is, on balance, in conformity with The San Francisco General Plan. The Department will work closely with the project sponsor to resolve those elements still unrefined at this Schematic Phase.

The Planning Commission has reviewed and considered information in the Planning Department files, staff reports and recommendations, public testimony and information presented to the Commission at its public hearings on this Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on January 24, 2002.

Linda Avery
Commission Secretary

AYES: Chinchilla, Fay, Baltimore, Joe, Lim Salinas, Theoharis

NOES: none

ABSENT: none

ADOPTED: January 24, 2002

SAN FRANCISCO
PLANNING COMMISSION
MOTION NO. 16337

ADOPTING FINDINGS, WITH THE ADVICE OF THE GENERAL MANAGER OF THE RECREATION AND PARK DEPARTMENT, IN CONSULTATION WITH THE RECREATION AND PARK COMMISSION, THAT ADDITIONAL NEW SHADING CAUSED ON ELEMENTS OF GOLDEN GATE PARK BY THE NEW M. H. DE YOUNG MUSEUM AS PROPOSED WOULD NOT BE ADVERSE BECAUSE OF THE TIME OF DAY, THE DURATION, THE LOCATION, AND THE SIZE OF THE NEW SHADOW, AND BECAUSE OF THE PUBLIC GOOD SERVED BY THE PROJECT; AND, THAT SUCH NEW SHADOW CONSIDERED ON THE PARK AS A WHOLE BE DEEMED *DE MINIMUS*, WITHIN A P (PUBLIC USE) DISTRICT AND AN OS (OPEN SPACE) HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 17, 2000 Ms. Deborah Frieden for the Corporation of Fine Arts Museums (hereinafter "Project Sponsor") made application for a Shadow Impact Study on the property at 75 Tea Garden Drive in Golden Gate Park; Lot 001 in Assessor's Block 1700 (hereinafter "Subject Property") to demolish the existing de Young and Asian Art Museums and reconstruct the de Young Museum in a new building at this site. The Project is located in a P (Public Use) District and an OS (Open Space) Height and Bulk district.

On December 7, 2000 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing and certified the Project's Final Environmental Impact Report in Motion No. 16039, adopted findings pursuant to the California Environmental Quality Act ("CEQA") in Motion No. 16040, adopted findings that additional new shading caused by the new M.H. de Young Museum would not be significant or adverse in Motion No. 16041 and adopted findings related to General Plan review and Section 101.1 Priority Planning Policies in Motion No. 16042.

In January 2001, a court challenge to the original Final EIR, certified on December 7, 2000 by the Planning Commission, and the process by which the Final EIR was certified, was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR. The Writ also set aside the City's project approval actions, including the actions taken by the Planning Commission on December 7, 2000 subsequent to the December 7, 2000 Final EIR certification.

The Board of Supervisors held a hearing on the appeal of the December 2000 Final EIR on August 20, 2001. The Project Sponsor had revised the design of the Project and the Board of

Supervisors directed that (1) additional environmental review be undertaken to review the revisions to the Project, (2) any errors in the Final EIR be corrected, and (3) the EIR should provide expanded information on historic resources. The Planning Commission certified the revised Final EIR on December 6, 2001 in Motion No. 16291. The Board of Supervisors affirmed the Planning Commission's certification of the revised Final EIR on January 14, 2002 in its Motion No. MO2-8.

On January 17, 2002, the General Manager of the Recreation & Parks Department consulted with the Recreation & Parks Commission to advise the Planning Commission on whether the shadow impacts of the revised Project in Golden Gate Park are significant. The General Manager has advised the Planning Commission, by letter dated January 18, 2002, that the shadow impacts are not significant.

On January 24, 2002, the Commission adopted findings in Motion No. 16336 in connection with its consideration of this action under CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, and made certain findings in connection therewith, and adopted a mitigation monitoring program, which findings and program are hereby incorporated by this reference as if fully set forth herein.

Prior to taking any action on the Project, the Planning Commission has reviewed and considered the information in the revised Final EIR, has reviewed the revised Project, has heard and considered testimony presented to it at the public hearing and has further reviewed and considered other information pertaining to the Project contained in the Department files.

FINDINGS

1. The above recitals are accurate and constitute findings of the Planning Commission.

2. The project site is in Golden Gate Park within a P (Public Use) zoning district and an OS (Open Space) Height and Bulk District; Assessor's Block 1700, Lot 1, bounded to the north and east by John F. Kennedy Drive, to the south by Tea Garden Drive with the Music Concourse beyond, and to the west by the Hagiwara Japanese Tea Garden.

3. The project site is presently occupied by an eight-building complex totaling approximately 230,000 square feet, which comprise the M.H. de Young Museum and the Asian Art Museum in Golden Gate Park.

4. The project would demolish the de Young and Asian Art Museums and reconstruct the de Young Museum in a new building on the existing site, northeast of the current building complex. The Asian Art Museum will relocate to the Civic Center. The new De Young proposal comprises two main levels above grade and one level below grade, increasing gallery and exhibition space at the site from the existing 37,000 square feet to about 75,000 square feet, and also includes a tower element at the northeast corner of the building.

5. The proposed footprint of the building, including the embossed and perforated copper skin is about 260 feet by 430 feet, with a roofline that rises in a gentle curve from a height of 33 feet at the western eave to a highpoint of 48 feet then down to its eastern eave at about 38 feet above grade. The tower element would be 144 feet high, with a floor plate (including stairs) approximately 41' by 93' at its third-story base, increasing at each level to a maximum of 41' by 108' at the top. The axes of each floor of levels three through nine rotate several degrees clockwise in plan from each floor immediately below, about 30 degrees total, producing walls with double-curved surfaces. The axes of the tower's lowest floor align with the main building, and the top floor axes of the tower align with the street grid outside of the Park.

6. *San Francisco Planning Code* Section 295, AHeight Restrictions on Structures Shadowing Property under the Jurisdiction of the Recreation and Park Commission.≅ was established by The Sunlight Ordinance of 1984 (Proposition K adopted by the San Francisco electorate). This requires the Planning Commission, prior to the issuance of a permit for a development which exceeds 40 feet in height, to make a finding that, if new shadow is cast by the proposed development on property under the jurisdiction of the Recreation and Park Commission, such new shading would not be significant or adverse. The Ordinance requires the Planning Commission and the Recreation and Park Commission jointly to adopt criteria for administration of this Code section.

7. The relocation of the building footprint to the northeast of the project site, coupled with the siting of the tower, and with its height greater than the existing, cause new shadows to be cast during the course of the year.

8. The Planning Department and Recreation and Park Department staff issued a Memorandum to the Planning Commission and Recreation and Park Commission, dated February 3, 1989, which identified quantitative and qualitative criteria for determining Asignificance≅ of shadow. The Memo also identified several Downtown City parks and set numerical shadow impacts allowed for these Parks. On February 7, 1989, by Resolution No. 11595, the two Commissions adopted the criteria described in that Memorandum.

9. That Resolution did not include criteria for Golden Gate Park, but did contain two germane elements for the quantitative and qualitative evaluation of new shadow:

   A. The Memorandum identified how new shadow load was to be measured: it is the additional amount of shadow-foot-hours of shade caused by the proposed building, expressed as a percent of total-foot-hours per year.

   B. Qualitative criteria for the approval of new buildings were identified in the Memorandum. The Memorandum stated that those criteria for assessing new shadow would be based on Aexisting shadow profiles, important times of day, important seasons in the year, location of the new shadow, size and duration of new shadows and the public good served by buildings casting new shadow.≅

10. Quantitative Criteria:
The square-foot hours of new shade created by the project as a percent of the available total for the Park is an analytical technique appropriate for much smaller, more typical open-space parks; for Golden Gate Park, with its huge area, this process produces a mathematically insignificant, or “de minimus,” result.

A. The existing museum creates approximately 79.1 million square-foot hours of shadow within Golden Gate Park. The shadow impact on the Park from the proposed project is about 17% greater than that, or approximately 92.3 million square-foot hours. This means that the proposed Museum’s shadow load on the Park as a whole, considered against 164 billion square-foot hours of insolation available over the year, is small, about 0.0562%. This new shadow, considered over the Park as a whole, represents an increase of only 0.0080% over the existing museum complex.

B. The impacts of the new and existing buildings on the entire Park are tabulated in the graphic below:

SHADOW IMPACTS on ENTIRE PARK

		existing	proposed	difference
Shadow cast by Bldg	(in 1000-sq.ft-hrs)	79,102.9	92,288.1	13,185.2
Shadow Load on Park	(%)	0.0482%	0.0562%	0.0080%
G. G. Park	(in 1000-sq.ft-hrs)	164,211,538.4	theoretically available	

C. A second, and important, analytical approach is to consider impacts on the specific and discrete elements of the Park which are affected by the new shadow, which provides information not only about numerical or quantitative impacts, but also provides a means to analyze those impacts on the human use of those elements, as considered in the Memorandum, which are listed as: existing shadow profiles, important times of day, important seasons in the year, location of the new shadow, size and duration of new shadows etc. These are described in the section following this, entitled “2. *Qualitative*

Criteria."

D. Five elements of the Park (four specific, and one generic) comprise the areas shaded by the project:

   i. ***The de Young Museum site,*** which is exempt from Section 295 of *The Planning Code,* because, under charter, this portion of the Park is under the jurisdiction of the Fine Arts Corporation, not under the jurisdiction of the Recreation and Park Department.

   ii. The Hagiwara Japanese Tea Garden, upon which shadow is reduced by almost 100% annually. The existing de Young Museum shadow impact is about 94.5 thousand square-foot hours; the project shadow would be about 0.3 thousand square-foot hours, with much of that small impact occurring during the first, early morning hours of the day.

   iii. ***The Music Concourse,*** upon which shadow is reduced by almost 3% annually. The existing de Young shadow impact is about 137 thousand square-foot hours; the project shadow would be about 131 thousand square-foot hours, with much of that shading occurring during the afternoon hours of the summer.

   iv. ***The Children's Playground,*** located north of the subject site across Kennedy Drive between 8th and 10th Avenues. The existing museum shadow impact on the park is negligible at about 0.06 thousand square-foot hours. The new project shadow across this area, all from the proposed tower, and, disregarding existing shading from intervening trees, is about 104 thousand square-foot hours out of 89.2 million square-foot hours available.

   v. The new shading during a time (late in the day) and a season (mid-winter) when use of the Playground can be expected to be limited. The new shadow would reach the playground in early November at approximately 3:00 p.m. As the shadow would move across the playground area, it will increase for approximately one-half hour until its maximum shadow would cover approximately one-half the playground area. The shadow would then decrease until it moves off the playground after approximately another one-half hour. This pattern would continue until mid-December as the shadow increases to cover approximately two-thirds of the playground area at its maximum. By mid-January, the shadow would be again reduced to approximately one-half the area; by early February, it would move substantially off the playground.

   vi. The play equipment is located in the far north area of the playground and, coming as it does from the south, the Project shadow would affect this area the least, both in duration and amount of area covered.

vii. The short duration of shadow that would be cast on the playground by the Project, particularly at this time of year, would not adversely affect the use and enjoyment of the playground, particularly when the existing shadow from the existing tree canopy is considered.

viii. If the high, dense evergreen tree canopy between the project and the playground is considered, then there is no new additional shading created by the project, because the playground is shaded by that canopy at times the tower shadow would reach the playground. It should be noted that the existing tree canopy is considered an integral and essential element of the landscape of Golden Gate Park and the objectives and policies of the Golden Gate Park Master Plan both serve to protect the existing canopy and call for the replacement and reinforcement of the canopy through reforestation. In contrast to other types of parks or landscaped environments, the landscape of Golden Gate Park cannot be considered temporary. While a particular and individual tree might be temporary, the long-term canopy must be maintained.

ix. Surveys of major mature trees in the Project vicinity conducted by the Project Sponsor indicate the maximum tree heights in this area range between 80 feet and 120 feet tall. There are dense clusters of trees around the Museum, along John F. Kennedy Drive, along Fulton Street, between Fulton and JFK Drive, and around the children's playground that have a significant shadowing effect at all times of day and year, particularly in winter when shadows are long. The tallest and most numerous trees are various species of eucalyptus, cypress and Monterey Pine, all evergreens.

x. Therefore, on the reasonable assumptions that the existing tree canopy is evergreen, dense enough to cast a significant shadow on the playground, and that these conditions are permanent, it can be concluded that the project casts no new shadow on the Playground.

xi. ***Non-specific areas,*** comprising Kennedy Drive, 8th and 10th Avenues, and dense sylvan areas, which are self-shaded between Kennedy Drive and Fulton Street. Again, the narrow project shadow of the tower overlays the dense tree canopy or the open space of paved roads.

xii. The only other special area that would be touched by this new shadow would be the western edge of the Rhododendron Dell which would receive a small amount of new shadow for a few minutes at dusk in June, outside the time frame subject to Section 295 of the Planning Code, which mandates consideration of shadows prior to one hour before dusk. Mature trees bordering the Dell already heavily shadow the area that would receive this new shadow.

E. The quantitative analysis on elements of Golden Park is summarized in the following table:

Comparison of EXISTING & PROPOSED BUILDING SHADOW IMPACTS on PARK ELEMENTS
(in thousands of square-foot hours except percentage)

	existing	proposed	difference	difference as %	% of available
Concourse	137.1	133.1	-4.0	(2.92) %	0.01032 %
Playgnd no trees	0.1	104.4	104.3	173900.00 %	0.11689 %
Playgnd w/ trees	0.0	0.0	0	0.00 %	0.00000 %
Tea Garden	94.5	0.3	-94.2	(99.72) %	0.00003 %
Bldgs (total)	79,102.9	92,288.1	13,185.2	16.67 %	

11. Qualitative Criteria:
The re-certified FEIR concludes that new shadows would be created by the new project in Golden Gate Park but that the Project shadow would not be considered a significant, adverse impact. The new building creates a less than 17% more new shadow over that which is cast by the existing buildings. Because the new building would be shifted slightly to the northeast, the new shadow created would be principally in this direction, and a portion of it would fall outside the boundaries of the Park. The new shadow within the Park would be of short duration and would be primarily cast during November, December, and January, when the weather is less likely to be sunny.

A. Regarding additional shading to the tree canopy from the project, consideration of the existing trees immediately north of the museum on the site is useful. Those trees fall within the annual shadow trace of the existing structures, and are similar in height, age and speciation to the trees falling under the new project shading. Those on-site trees shaded by the existing museum have thrived, so the short-duration northerly shadow cast on the trees across Kennedy Drive by the project tower, primarily during seasonally foggy and overcast days, when direct sunlight would not be available anyway, probably will not have a significant effect on the health and density of the existing tree canopy.

B. The Project will create two new open space elements for the enjoyment of the public that will add to the recreational opportunities for park visitors as well as Museum visitors:

i. The new Sculpture Garden will be approximately 50,000 sq. ft. of new open space between the Museum's western edge and the eastern boundary of the Japanese Tea Garden;

ii. The Garden of Enchantment will be approximately 30,000 sq. ft. of new open space. It is proposed as a children's garden incorporating the Pool of Enchantment, the historic palms, a teaching and gathering area for school groups, and is proposed to straddle a direct pedestrian path to the children's playground beyond Kennedy Drive, via the historic pedestrian tunnel.

12. Based on analysis of new shadow created by the project, and upon quantitative and qualitative criteria for the approval of new buildings as identified in the Memorandum adopted February 7, 1989, by Resolution No. 11595, and in accord with Section 295 of The San Francisco Planning Code, the new shadow on elements of Golden Gate Park is considered not adverse nor significant and new shadow cast on the Park as a whole is deemed *de minimus*.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department, and the recommendation of the General Manager of the Recreation and Park Department, in consultation with the Recreation and Park Commission, and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **FINDS** regarding Shadow Impact Application 00.1094K that the new shadow on elements of Golden Gate Park is considered not adverse nor significant and new shadow cast on the Park as a whole is deemed *de minimus*.

The Planning Commission has reviewed and considered information in the Planning Department files, staff reports and recommendations, public testimony and information presented to the Commission at its public hearings on this Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on January 24, 2002.

Linda Avery
Commission Secretary

AYES: Chinchilla, Fay, Baltimore, Joe, Lim Salinas, Theoharis

NOES: none

ABSENT: none

ADOPTED: January 24, 2002

FINE ARTS MUSEUMS OF SAN FRANCISCO

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Board of Trustees

January 31, 2002

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND THE STATE CEQA GUIDELINES (AND A STATEMENT OF OVERRIDING CONSIDERATIONS) IN CONNECTION WITH THE PROPOSED NEW DE YOUNG MUSEUM LOCATED AT 75 TEA GARDEN DRIVE IN THE MUSIC CONCOURSE OF GOLDEN GATE PARK, LOT 1 IN ASSESSOR'S BLOCK 1700 AND APPROVING THE DESIGN OF THE NEW DE YOUNG MUSEUM PROJECT AND AUTHORIZING THE CORPORATION OF THE FINE ARTS MUSEUMS TO PROCEED WITH THE PROJECT

WHEREAS, The New M.H. de Young Museum (the "Project") is proposed to be constructed at the museum's existing site at 75 Tea Garden Drive in the Music Concourse of Golden Gate Park, Lot 1 in Assessor's Block 1700, after demolition of the eight existing buildings comprising the M.H. de Young Museum and the Asian Art Museum and relocation of the Asian Art Museum to its new facility in the City's Civic Center; and

WHEREAS, The Corporation of The Fine Arts Museums of San Francisco ("COFAM") submitted its application for environmental review of the proposed New de Young Museum on July 12, 1999 (City Planning File No. 1999.455E) ; and

WHEREAS, The Planning Department for the City and County of San Francisco (the "Planning Department") determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on May 6, 2000; and

WHEREAS, On July 22, 2000, the Planning Department published the Draft Environmental Impact Report (hereinafter "DEIR") for the Project; and

WHEREAS, On August 24, 2000, the Planning Commission held a duly noticed public hearing on the DEIR, at which time opportunity for public comment was received on the DEIR, and written comments were received through August 24, 2000; and

WHEREAS, The Planning Department prepared responses to comments received at the public hearing on the DEIR and submitted in writing to the Planning Department, prepared revisions to the text of the DEIR and published a Draft Summary of Comments and Responses on November 22, 2000; and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the Project was prepared by the Planning Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available and the Draft Summary of Comments and Responses, all as required by law; and

WHEREAS, On December 7, 2000, the Planning Commission reviewed and considered the FEIR and, by Motion No. 16039, found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and that the FEIR was adequate, accurate and objective, reflected the independent judgment and analysis of the Planning Department and the Planning Commission and that the Summary of Comments and Responses contained no significant revisions to the DEIR, adopted findings relating to significant impacts associated with the Project and certified the completion of the FEIR in compliance with CEQA and the State CEQA Guidelines; and

WHEREAS, In January 2001, a court challenge to the Final EIR and the process by which the Final EIR was certified was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR and also setting aside the City's project approval actions taken subsequent to the December 2000 Final EIR certification; and

WHEREAS, The Board of Supervisors conducted a public hearing on August 20, 2001, to consider the appeal of the Planning Commission's certification of the Final EIR. At the August 20, 2001 hearing, and by letter to the Board of Supervisors dated August 17, 2001, COFAM stated that it had discovered a discrepancy in the height of the proposed Educational Tower analyzed in the Final EIR, and the height actually proposed for the tower, which affected the visual and shadow impact analyses of the Final EIR. The height of the tower analyzed for shadow and visual quality impacts in the Final EIR was based upon an inaccurate computer file which scaled the tower to 144 feet rather than its proposed 160 feet. COFAM and the Planning Department asked the Board of Supervisors to remand the Final EIR back to the Planning Department and Planning Commission to correct those errors; and

WHEREAS, At the August 20, 2001 hearing, the Board disapproved the certification of the Final EIR and remanded the Final EIR to the Planning Commission. The Board's findings directed the Planning Commission and Planning Department to revise the Final EIR to include corrections and related environmental analysis, as may be appropriate under CEQA, on the following issues: (1) errors and discrepancies in the shadow impacts analysis relative to the height of the Tower; (2) errors and discrepancies in the visual impacts analysis relative to the height of the Tower; (3) updating and correcting the Project Description relative to the height of the tower and to other information now available regarding the proposed Project design; and (4) broadening and correcting the description and related impacts analysis of the Project environmental setting relative to existing and potentially qualified historic resources, already addressed on Final EIR pages C&R.80 - C&R.82. The Board of Supervisors approved Motion M01-127 at its August 27, 2001 hearing specifying the revisions to be made to the Final EIR; and

WHEREAS, The Project's Educational Tower has been redesigned from the 160 foot height as described in the December 2000 Final EIR to 144 feet, with floor dimensions ranging from approximately 41 feet by 93 feet at the first floor to about 41 feet by 108 feet at the top, or ninth, floor. The Final EIR now includes minor text changes and revised figures to reflect the updated information; and

WHEREAS, The Final EIR has also been amended to include expanded information about the cultural resources in the area; and

WHEREAS, The revised sections of the Final EIR were published and made available to the Commission and the public on November 20, 2001; and

WHEREAS, On December 6, 2001, the Planning Commission reviewed and considered the revised FEIR and, by Motion No. 16291, found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31 and that the revised FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Summary of Comments and Responses contains no significant revisions to the Draft Environmental Impact Report, and certified the revised FEIR as in compliance with CEQA and the CEQA Guidelines; and

WHEREAS, On December 21, 2001 the Planning Commission's certification of the revised FEIR was appealed to the Board of Supervisors. The Board of Supervisors held a public hearing on January 14, 2002 and upheld the Planning Commission's certification of the FEIR in its Motion No. M02-8; and

WHEREAS, In Planning Commission Motion No._____, the Planning Commission adopted findings for the Project, as required by CEQA, regarding the alternatives, mitigation measures and significant environmental impacts analyzed in the FEIR, a statement of overriding considerations for approving the Project, and a proposed mitigation monitoring program, which material was made available to the public and the Planning Commission for the Planning Commission's review, consideration and actions; and

WHEREAS. In Planning Commission Motion No._____, the Planning Commission found that the shadow impacts of the Project on Golden Gate Park are not significant or adverse and new shadow cast on Golden Gate Park is considered de minimus, which Motion the Board of Trustees has reviewed and considered; and

WHEREAS, In Planning Commission Motion No. _____, the Planning Commission found that the Project is, on balance, in conformity with the General Plan and the General Plan Priority Policies, which Motion the Board of Trustees of the Fine Arts Museums ("Board of Trustees") has reviewed and considered; and

WHEREAS, The Board of Trustees has heard, reviewed and considered the testimony presented to it at the public hearing and has further reviewed and considered other information pertaining to the Project presented by staff and included in the files of the Board of Trustees of the Fine Arts Museums on this matter; and

WHEREAS, Project environmental review files and other Project related Planning Department files (Planning Department File Nos. 1999.455E, 2000.1094K, 2000.1094R and 2000.1094V) have been available for review by the Board of Trustees and the public at the Planning Department's office located at 1660 Mission Street, and Board of Supervisors File No. 012284 has been available for review by the Board of Trustees and the public at City Hall Room 244, and those files are part of the record before the Board of Trustees; now, therefore, be it

RESOLVED, That the Board of Trustees has reviewed and considered the Final Environmental Impact Report ("FEIR") and hereby adopts the New de Young Museum Project CEQA Findings attached hereto as Attachment A, including its Exhibits 1 and 2, and incorporates the same herein by this reference; and, be it

FURTHER RESOLVED, That the Board of Trustees approves the design of the Project and authorizes COFAM to proceed with the Project.

ATTACHMENT A

NEW de YOUNG MUSEUM
CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

I. INTRODUCTION

The following findings are hereby adopted by the Board of Trustees of the Fine Arts Museums of San Francisco ("Board of Trustees") pursuant to the requirements of the California Environmental Quality Act, California Public Resources Sections 21000 et seq., ("CEQA"), the Guidelines for Implementation of CEQA, 15 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

Article II provides a description and history of the Project.

Article III sets forth the basis for approval of the Project, and the economic, social and other considerations which support the rejection of the Alternatives analyzed in the Final Environmental Impact Report ("FEIR").

Article IV sets forth findings as to the disposition of each of the mitigation measures proposed in the FEIR. Mitigation measures are grouped in the following categories: (1) mitigation measures proposed in the FEIR but which are not feasible at this time and would not be implemented in connection with the Project for the reasons stated but are recommended by the Board of Trustees for adoption, if appropriate, at the time of implementation of the Music Concourse garage project; and (2) mitigation measures which are proposed as part of the Project and are adopted by the Board of Trustees exactly as proposed in the FEIR. The full text of the mitigation measures as proposed in the FEIR is set forth in Exhibit 1 attached hereto. Exhibit 2, attached to these findings, contains the Mitigation Monitoring Program.

Article V discusses the environmental impacts of the Project; both the environmental impacts determined to be significant and those discussed in the FEIR but determined to be not significant and discusses whether there have been any changes to the Project or in the environment which would require additional environmental review.

Article VI identifies the unavoidable significant environmental impacts of the Project if mitigation measures are not adopted in the future to address cumulative transportation impacts.

Article VII contains a Statement of Overriding Considerations, setting forth specific reasons in support of the Board of Trustees's approval of the Project and its rejection of the Alternatives and Mitigation Measures to address cumulative impacts not implemented at this time as part of the Project.

II. PROJECT DESCRIPTION

A. Project Approvals. The Project is subject to a series of approvals that together define the terms under which the Project will occur, as follows:

1. Planning Code Section 101.1 Priority Planning Policies (Proposition M) and General Plan consistency findings as related to Planning Code Sections 234.1 and 290;

2. Determination under Planning Code Section 295 that new shadows cast by the Project on property under the jurisdiction of the Recreation and Park Board of Trustees are insignificant;

3. Parking Variance pursuant to Planning Code Section 305; and

4. Approval of final design and implementation by the Board of Trustees of the Fine Arts Museums of San Francisco; and

5. Possible approval of the New de Young Financing Plan and support of the decision of the Corporation of the Fine Arts Museums ("COFAM") and the Fine Arts Museums Foundation ("Foundation") to seek the sale and issuance of tax-exempt bonds by the appropriate state financing authority, which will be guaranteed by the future flow of pledges, in order to meet the cash flow requirements for the construction of the New de Young Museum; and

6. Possible approval of a Lease and Facilities Agreement between the Fine Arts Museums of San Francisco and the Foundation defining the respective roles and responsibilities of the Fine Arts Museums of San Francisco and the Foundation for the use and operation of the new de Young Museum and facilitating the financing for the new de Young Museum.

B. Consultation with Recreation and Park Department. Project landscaping and restoration plans, and Project access plans, will be developed and implemented in consultation with the Recreation and Park Department.

C. Project Description/Elements of Project. The proposed project would demolish and reconstruct the M.H. de Young Museum on the museum's existing site in Golden Gate Park. The project would include demolition of eight existing buildings ranging in height from 26 to 42 feet and fronting approximately 500 feet along Tea Garden Drive north of the Music Concourse. The existing buildings total approximately 230,000 sq. ft., and compose the de Young Museum and the Asian Art Museum. An existing 85-space surface parking lot used by the museum staff located on the north end of the site would be removed. The Asian Art Museum wing would be demolished after the Asian Art Museum is relocated to its new Civic Center building, planned to occur at the end of 2002. The New de Young Museum would include gallery space, a main lobby and courtyard, educational spaces, inner courtyards, café, museum store, tower observation area, curatorial and museum administration offices, a loading dock, art storage and conservation space, and other museum-related uses in one structure.

The New de Young Museum would be oriented in a southwest to northeast direction, the orientation of the adjacent Music Concourse. The building would include two main levels above grade, one level below grade, a varying roof height ranging from 33 to 48 feet, and a 144-foot tower at the northeast corner of the project site. The existing tower at the entrance of the de Young Museum is approximately 125 feet in height, and is five feet above grade for a total height of 130 feet from grade. Overall, the New de Young Museum would increase the floor area of the museum's functions from approximately 230,000 sq. ft. to approximately 300,000 sq. ft. on a smaller footprint than the existing de Young Museum and Asian Art Museum. This increase in area on a smaller footprint is possible primarily because of the departure of the Asian Art Museum and because the new plans incorporate a full basement and full second floor that the current de Young facility does not have. The basement level would include an auditorium and temporary exhibition galleries, coat check, loading docks accessible from John F. Kennedy Drive, storage areas, and mechanical operations. The ground floor would include a café, lobby, visitor information area, restrooms, interior courtyards, a museum store, gallery space, a Piazzoni Mural room, a library, and administrative offices. The second floor would have galleries for exhibitions of the permanent collection, a flexible gallery, conservation laboratories, and a textile study center. The Educational Tower would include educational uses with volunteer and docent training facilities, a teacher resource center, a library reading room, artist studio, classrooms, and an observation area.

The museum would be served by a vehicle drop-off area and primary entrance on Tea Garden Drive. Additional entrances would allow non-ticketed access to the museum's lobby west from John F. Kennedy Drive and east from the Japanese Tea Garden. The 85 existing paved parking spaces would be removed. The project would not provide replacement parking for these 85 parking spaces.

Excavation for the project would be up to approximately 25 feet in depth to provide the full basement and along the northeast portion of the project in order to allow natural light to enter the basement level. The existing basement, below grade on the northwest portion of the site, would be removed. The proposed project would include excavation of about 85,000 cu. yd. of soil, of which about 17,000 cu. yd. would be used to fill the existing basement of the Asian Art Museum.

The project would include development and implementation of a landscaping/restoration plan in consultation with the Recreation and Park Department, consistent with the Golden Gate Park Master Plan. The proposed project would include retention of the naturalistic plantings including an existing earth berm, with a row of mature trees atop it along the north edge of the project site along Kennedy Drive behind the existing parking lot. Smaller trees and shrubs covering the area between the earth berm and the sidewalk on Kennedy Drive and along the western edge of Kennedy Drive would be retained or replaced. Existing trees on the site would be saved, relocated or replaced, as determined by a tree survey of the project site and in consultation with the

Recreation and Park Department. The palm grove would be retained with the project. The interior courtyards would include new landscaping features. The Pool of Enchantment would be relocated and reconstructed on the site, and the existing two Sphinx statues and other sculptures, near the intersection of John F. Kennedy Drive and Tea Garden Drive, would be retained as part of the project.

D. History of Project Approval and CEQA Review. The original Final EIR for this Project was certified by the Planning Commission by its Motion No. 16039 on December 7, 2001. In January 2001, a court challenge to the Final EIR and the process by which the Final EIR was certified was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR. The Writ also set aside the City's project approval actions taken subsequent to the December 2000 Final EIR certification, including this Board of Trustees' approval action taken on December 14, 2000.

The Board of Supervisors conducted a public hearing on August 20, 2001, to consider the appeal of the Planning Commission's certification of the Final EIR. The Board reviewed and considered the written record, including the Final EIR, the appeal, and all of the public comments made and correspondence submitted in support of and opposed to the appeal. At the August 20, 2001 hearing, and by letter to the Board dated August 17, 2001, COFAM stated that it had discovered a discrepancy in the height of the proposed Educational Tower analyzed in the Final EIR, and the height actually proposed for the tower, which affected the visual and shadow impact analyses of the Final EIR. The height of the tower analyzed for shadow and visual quality impacts in the Final EIR was based upon an inaccurate computer file which scaled the tower to 144 feet rather than its proposed 160 feet. COFAM and the Planning Department asked the Board of Supervisors to remand the Final EIR back to the Planning Department and Planning Commission to correct those errors. The Board of Supervisors also requested expanded information on cultural resources. The Board of Supervisors, by its Motion M01-127, disapproved the certification of the Final EIR and remanded the Final EIR to the Planning Commission. The Board of Supervisors' findings directed the Planning Commission and Planning Department to revise the Final EIR to include corrections and related environmental analysis, as may be appropriate under CEQA, on the following issues: (1) errors and discrepancies in the shadow impacts analysis relative to the height of the Tower; (2) errors and discrepancies in the visual impacts analysis relative to the height of the Tower; (3) updating and correcting the Project Description relative to the height of the tower and to other information now available regarding the proposed Project design; and (4) broadening and correcting the description and related impacts analysis of the Project environmental setting relative to existing and potentially qualified historic resources, already addressed on Final EIR pages C&R.80 - C&R.82.

The Project's Educational Tower has been redesigned from the 160 foot height as described in the December 2000 Final EIR to 144 feet, with floor dimensions ranging from approximately 41 feet by 93 feet at the first floor to about 41 feet by 108 feet at the top, or ninth, floor. The Final EIR now includes minor text changes to reflect the updated information on the project description in the following sections: the Summary; the Project Description; and, the Visual Quality and Shadow Impact Analyses contained in

Chapter III. Figures 7 – 10 C have been revised to show the visual quality impacts of the revised Project. A new Figure 8A has been added to show the Educational Tower from the Concourse at the northeast corner of the Project site. The Shadow Trace in Figure 11 has been revised and Figures 11 – 15 have been revised to show the shadow effects of the Tower, as modified. The Final EIR has also been amended to include expanded information about the cultural resources in the area. The text set forth in Chapter III A, Land Use, Plans and Zoning, now includes a specific reference to the cultural resources in the area. The Responses to Comments, pages C&R 67 – C&R 85H, include expanded information about cultural resources based upon *An Evaluation of the Potential Effect of the Proposed New de Young Museum on the Golden Gate Park Historic District* (Report), a report prepared by Page & Turnbull, historic architectural consultants. The Report's conclusions are consistent with the conclusions in the Initial Study and the conclusions in the December 2000 Final EIR that the Project would not adversely affect the eligibility of Golden Gate Park for listing as a potential National Register Historic District, or the Japanese Tea Garden or Spreckels Temple of Music as existing or potential National Register listings.

The revised sections of the Final EIR were published and made available to the Planning Commission and the public on November 20, 2001. The revisions did not add significant new information to the December 2000 Final EIR or change the conclusions reached in the December 2000 Final EIR; the revisions updated the text to reflect changes in the Project and to provide additional information about cultural resources. In its Motion No. 16291 certifying the revised FEIR, the Planning Commission specifically found that recirculation of the document was not required because the revisions did not identify any of the following:

- A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
- A substantial increase in the severity of an environmental impact unless mitigation measures are adopted to reduce the impact;
- A feasible project alternative or mitigation measure considerably different from others previously analyzed clearly lessening the significant environmental impacts of the project, but the project proponents decline to adopt it;
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The Planning Commission found in its Motion No. 16291 that the revised FEIR did not identify new or substantially more severe environmental impacts, did not identify new mitigation measures or identify any new alternatives to the Project. The information on cultural resources expanded upon information contained in the December 2000 Final EIR but did not identify any significant environmental impact on cultural resources, nor did it alter the conclusions of the December 2000 Final EIR. The Board of Supervisors affirmed the Planning Commission's certification of the revised FEIR on January 14, 2002 by its Motion No. M02-8. All references to the FEIR in this Attachment A shall refer to the revised FEIR.

III. ALTERNATIVES

A. Introduction. As recognized in the FEIR, the M.H. de Young Museum and Golden Gate Park, which provides the museum's setting, are beloved San Francisco institutions. For this reason and because the museum is a significant public project, planning for the New de Young Museum has been ongoing for several years, and has been the subject of numerous public workshops, meetings of the Board of Trustees and other public forums. The overwhelming public sentiment has been to ensure retention of the museum in Golden Gate Park and not relocate it to another site in San Francisco. The Project analyzed in the FEIR is the culmination of this public process.

The FEIR does not identify any project-specific significant environmental effects and there would be no significant adverse effects of the project that could only be reduced or eliminated by selection of an alternative project design, size or location. Therefore, the FEIR analyzed two alternatives to the Project: (1) Alternative A, the "No Project Alternative" and (2) Alternative B, the Reuse of Existing Museum Buildings. The FEIR also discussed Alternative C: Alternative Locations Considered.

B. Project Objectives. The Board of Trustees's primary goal of building a new de Young Museum is to provide a safe and up-to-date facility for visitors, staff and the City's art collections. Consistent with this primary goal is the desire to create a world-class public building that defines the image of the Museum through exciting architecture, design and landscape integration. The Board of Trustees believes that this new museum will trigger a revitalized era of art, education and culture at the de Young Museum that would benefit the City and the Bay region. The Project most closely achieves the objectives set forth in the FEIR as follows:

1. **To assure safety** by: providing a seismically safe building for the public, staff, and works of art; creating a facility free from hazardous materials (e.g., asbestos, lead); providing code-compliant, museum-quality systems such as Heating/Ventilation/Air Conditioning, life safety and fire detection/suppression systems; improving staff work areas to meet museum and occupational health and safety standards, providing a state-of-the-art security system; and improving art delivery, movement and handling systems.

Goal 1: Provide highest level of protection for visitors and art objects through the use of base isolation.

The Museum suffered damage during the 1989 Loma Prieta earthquake, resulting in the necessity to install a system of seismic bracing on the building exterior and roof. This damage led to loss of the federal indemnification necessary to host major traveling exhibitions and designation by the City as having a high seismic risk. Structural and other problems associated with the existing buildings also have led to conditions unsuitable to housing the museum's valuable art collection, including moisture problems that are damaging the collection. For these reasons, a new, state-of-the art facility is necessary to provide a safe structure for the public and for the valuable art collection.

2. **To improve access** by: increasing convenience and safety for San Francisco residents, regional visitors, and tourists; providing a fully accessible facility for all visitors; and improving access via public transportation and automobiles.

    - Goal 1: Provide multiple entrances and large free zone within the museum to encourage and simplify entry and participation in museum programs.
    - Goal 2: Provide separate entry for school groups directly to education program areas to better accommodate students' and teachers' needs.
    - Goal 3: Provide new visitor drop-off zones for school buses, tour buses, taxis, etc. outside the flow of traffic for more safety.

The new museum would provide a fully accessible facility, with a main vehicle drop-off area and primary entrance on Tea Garden Drive, with additional entryways allowing non-ticketed access to the museum's lobby, education tower and other special museum areas such as the Piazzoni Mural Room. The new drop-off zones would be sited in a way that minimizes interference with traffic along Tea Garden Drive. In these ways, the design of the new museum will provide a safer environment for all visitors to the museum, including children arriving with school groups, and will enable the free flow of traffic in and around the Music Concourse area.

3. **To accommodate a growing art collection** by: providing adequate, flexible space and expansion opportunity to meet the goals of the Museum's Collection Development Plan; providing an environment that encourages donors to improve and expand the collection through new gifts and purchases; and improving and expanding study, storage and conservation areas.

    - Goal 1: Provide a non-hierarchical and flexible gallery arrangement to provide for the museum's diverse collections.
    - Goal 2: Double exhibition space for the collections to accommodate growth.

The existing museum does not provide sufficient space for the museum collection and does not allow for growth of the collection. Not only is exhibition space limited but existing storage space is inadequate under current conditions at the museum. In contrast to the existing space, the new space offered in the museum will allow for a broader range of space to exhibit the collections, both permanent and visiting. It also will allow for sufficient storage and conservation areas. New, usable floors in the educational tower will provide classrooms and other amenities that cannot be accommodated in the current museum buildings.

4. **To enhance the museum experience** by: providing a setting that welcomes all visitors and establishes the museum as an urban oasis; creating a dynamic identity for the museum that symbolizes its mission, aspirations to excellence, and San Francisco's civic pride; and creating a user-friendly facility that encourages visitation and increases enjoyment of the museum.

    - Goal 1: Provide interior courtyards that bring the park and natural light into the museum and provide vistas out into the park to improve the relationship of the museum with the park.
    - Goal 2: Create a new sculpture garden to integrate the park experience with the museum programs and provide a new public amenity.
    - Goal 3: Expand visitor resources by making previously non-public resources open to the public, by creating new library reading room and textile study center.
    - Goal 4: Expand visitor amenities such as coat check, restrooms, rest areas, restaurant and outdoor café space.
    - Goal 5: Create a room to house the Piazzoni Murals removed from the Old Main Library.

These objectives and goals would be met through the provision of more square footage on a smaller building footprint. The increase in area on a smaller footprint, due to incorporation of a full basement and full second floor and Asian Art Museum's move to the Civic Center, allows substantial new landscaped areas which would bring the park experience into the museum. It also allows space for two new public amenities, a new Sculpture Garden and new Children's Garden. These areas, along with new café space, a museum store, tower observation area and inner courtyards will significantly enhance the visitor experience. A Piazzoni Mural Room has been incorporated into the Project to house the murals removed from the Old Main Library.

5. **To broaden educational services** by: providing multi-purpose educational classrooms and resource center; expanding orientation, information, and interpretive spaces and galleries; incorporating new technologies; expanding the reference library; and expanding

and continuing development of "Gallery One," the children's gallery.

- Goal 1: Consolidate and expand educational programming into a major feature of the museum such as the tower where it will be both a symbol of the commitment of the museum to education and also an efficient and exciting space.

- Goal 2: Expand the museum's ability to offer high school and college educational programs.

- Goal 3: Provide a children's program area for younger children that is secure and easily accessible.

- Goal 4: Provide an outdoor play and education area for children that connects the museum's programs with the outdoor environment.

These objectives and goals would be met through the provision of additional areas for educational purposes, particularly the new space in the educational tower, including classrooms, library reading room, education administration space, teachers' resource center and artist studio. The auditorium and children's art gallery would provide additional educational opportunities. New outdoor space will be provided in the form of an Sculpture Garden (creating approximately 50,000 square feet of outdoor space between the Museum and the Japanese Tea Garden) and a Garden of Enchantment (incorporating approximately 30,000 square feet of open space). Proposed as a children's garden, the Garden of Enchantment will serve as a teaching and gathering area for school groups.

6. **To attract popular temporary exhibitions to San Francisco** by: expanding programs to attract and diversify visitors from all communities; and providing exhibitions that enhance visitor enjoyment through exposure to new art ideas and cultures.

   - Goal 1: Provide a temporary exhibition facility separate from the collection areas that will provide more flexibility in programming without interfering with the other activities of the museum.

   - Goal 2: Provide a state-of-the-art flexible facility that will attract both diverse and world-class exhibitions.

These objectives and goals would be met through provision of new space within the museum to accommodate temporary exhibitions. With construction of a new facility, the Museum will again be able to secure the federal indemnification necessary to host major traveling exhibitions. Not only would the new facility provide additional space to accommodate traveling exhibits, but there is separate space specifically designated for these exhibits. This will minimize conflicts with the Museum's permanent collection.

7. **To maintain economic vitality** by: increasing attendance; designing a cost-efficient facility that will minimize operating expenses; expanding earned revenue on all income-producing activities, including admissions, temporary exhibitions, the café, bookstore, auditorium, etc., and increasing rental usage by outside groups, particularly during non-public hours.

    - Goal 1: Provide energy-efficient building systems and incorporate to the extent possible sustainable design features and approaches.

    - Goal 2: Provide ready access to features such as the museum store and restaurant without ticketing.

These objectives and goals would be met through construction of a new state-of-the-art facility, which would have a central, energy efficient HVAC system. A main entryway and two additional entrances would provide access to the museum collections as well as the Sculpture Garden, Garden of Enchantment, café and museum store.

8. **To support the City of San Francisco** by: expanding the museum's contribution to San Francisco's economy through visitor support of local restaurants, hotels, and retail; seeking a compatible and synergistic relationship with the museum's neighborhood(s); and adhering to the policies of the City and County of San Francisco.

    - Goal 1: Create a distinctive design that will advance the de Young as a landmark that serves to attract the local community and visitors alike.

    - Goal 2: Create an outstanding civic amenity at no cost to the taxpayers of San Francisco.

Privately funded, the New de Young Museum would provide a new state-of-the-art facility without cost to the City. The new museum, designed by world class architects, will create a distinctive new structure for the benefit of City residents and visitors to Golden Gate Park. Not only does the design contribute to the Museum as a landmark feature of the Park, it also creates significant new open space areas serving as a buffer to the adjacent Japanese Tea Garden and enhancing the relationship between the Museum and Park experience.

C. Reasons for Rejection of Alternatives.

The FEIR analyzed two alternatives and discussed alternative sites previously considered by the Project Sponsor and rejected. The Alternatives are rejected because the Board of Trustees finds that there is substantial evidence of specific economic, legal, social, technological and other considerations that make such Alternatives infeasible, as set forth below.

1. Alternative A. Alternative A, the "No Project" Alternative described at pages 88 through 90 of the FEIR, is rejected in favor of the Project and is found infeasible for the following environmental, economic, legal, social and technological reasons:

Alternative A would not be desirable nor meet the Project Sponsor's Objectives. The Asian Art Museum would vacate its space at the existing buildings and relocate to the Civic Center. The extensive existing deficient structural, utilities, climate-control, seismic, security and life-safety conditions which currently exist would continue or would require substantial expenditures to correct. Due to damage occasioned as a result of the 1989 Loma Prieta earthquake, the de Young Museum lost its federal indemnification necessary to host major traveling exhibitions. It is unlikely that the indemnification could be secured such that major temporary exhibits could again be hosted by the Museum. Under this alternative, it is possible that the Museum would still go forward with its plans to close, leaving an empty building that is in need of substantial repair in order to continue to be occupied. Closure of the Museum could force the Museum to relocate outside Golden Gate Park or to close and store its art collections. If the existing buildings remained unoccupied, this would create detrimental effects on Golden Gate Park generally and on the Music Concourse area specifically. Loss of the Museum's institutional presence in Golden Gate Park reduces cultural and recreational opportunities in the Park.

2. Alternative B. Alternative B, the "Reuse of Existing Museum Buildings" Alternative described at pages 90 through 92 of the FEIR, is rejected and is found infeasible for the following environmental, economic, legal, social and technological reasons:

Alternative B would not be desirable nor meet the Board of Trustees' objectives. This alternative would require, for structural reasons, the demolition and reconstruction of at least 80% of the interior of the buildings, as well as significant portions of the buildings' exteriors. Extensive structural and other upgrades, as identified on page 91 of the FEIR and in the *New de Young Museum EIR*, Rehabilitation Statement, June 2000, a copy of which is on file with the Planning Department at 30 Van Ness Avenue, would be required to address the structural, life-safety, hazardous materials remediation, climate control (which is critical in order to protect the art collection), utilities and security systems, and disabled access upgrades. Under this alternative, the Asian Art Museum would still vacate and relocate to the Civic Center. This alternative would not reduce the building footprint, which would occur with the Project, and therefore, there would be no additional landscaped areas. Loading activities would still occur on the surface of the Park rather than within the building. Also, while the Project would cast limited shadow on the playground and lawn area across John F. Kennedy Drive, the substantial reduction in shadows on the Music Concourse and the Japanese Tea Garden which would occur with the Project would not occur under this alternative. This alternative would not create the additional buffer between the Museum and the Japanese Tea Garden, nor would it result in the significant new amenities offered with the Project, such as the Garden of Enchantment and Sculpture Garden which would enhance the Museum's relationship to the Park.

3. Alternative C. Alternative C, the "Alternative Sites Considered" is discussed at pages 92 through 93 of the FEIR. A 1997 study, the *M.H. de Young Memorial Museum Site Selection Study*, summarized the potential museum sites: Transbay District, Mid-Embarcadero (Davis, Clay, Washington and The Embarcadero), Broadway and The Embarcadero, and Golden Gate Park. Although the Mid-Embarcadero site was identified in the study as the strongest potential site, the Golden Gate Park site was the overwhelming choice expressed by the public. The Transbay District site assumed relocation of the Transbay Transit Terminal which relocation is not now occurring and, therefore, this site would not likely be available. The Mid-Embarcadero site is now proposed as open space. The Broadway/Embarcadero site is owned by the Port of San Francisco who has offered it for lease for a hotel development. For these reasons, the alternative sites are not feasible.

IV. MITIGATION MEASURES

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The mitigation measures listed in this Section IV mitigate the potential significant impacts of the Project, as described in the FEIR.

The findings in this section concern mitigation measures set forth in the FEIR. These findings fall into two categories: (1) mitigation measures proposed in the FEIR but which are not feasible at this time and would not be implemented in connection with the Project for the reasons stated but are recommended by the Board of Trustees for adoption, if appropriate, at the time of implementation of the Music Concourse garage project; and (2) mitigation measures that are proposed as part of the Project and are adopted by the Board of Trustees exactly as proposed in the FEIR.

All of the mitigation measures discussed in the FEIR are coded and attached hereto as Exhibit 1. In the text of these findings, mitigation measures adopted by the Board of Trustees are referenced by the topic and number in Exhibit 1.

The mitigation measures proposed for the Project will govern the actual construction, operation and use of the Project. These measures are most appropriately adopted by the Board of Trustees. Therefore, the mitigation measures listed under Section B (Mitigation Measures Proposed as Part of the Project and Adopted by the Board of Trustees) are adopted by the Board of Trustees.

A. Mitigation Measures Not Adopted. The Board of Trustees finds that the following mitigation measures as they appear in the FEIR are not included in the Project and are infeasible for implementation at this time for the reasons described below. The Board of Trustees believes that such measures may be appropriate for implementation in the future, at such time as the planned Music Concourse garage proceeds, the Academy of Science project proceeds as well as other development assumed in the area, and should be considered and implemented at that time if determined to be feasible. The measures are infeasible at this time and, therefore, are rejected for implementation in connection with the Project at this time, but are recommended for adoption by the appropriate City agencies, if feasible, in connection with other development projects, including the Music Concourse garage and the Academy of Science, for the reasons described below.

1. Transportation.

The following measures were identified in the Project FEIR to mitigate cumulative traffic impacts associated with the Project and other cumulative conditions. These measures will not be implemented in connection with the Project and are infeasible at this time for the following reasons:

a. Cumulative Traffic Conditions.

With the project and Music Concourse Garage Assumption A (this assumes that the only access point to the garage would be at the intersection of Fulton Street/Tenth Avenue), the intersection of Fulton/Stanyan would change from LOS D to LOS E. To avoid this impact, prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (from 4:00 to 6:00 PM). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds. The impact that would be addressed by this measure would be the significant impact associated with Garage Assumption A. The impact could be exacerbated to some degree with vehicle trips generated by the Project; however, this impact would not result from Project vehicle trips alone. Until final plans for the garage are developed, it is impossible to know whether implementation of this mitigation measure would be appropriate or feasible given the garage configuration and location of entrances to the garage. This measure is not necessary to mitigate a Project impact if only the Project were implemented without other future development, nor is it feasible for implementation in connection with the Project as the Garage Concourse Authority and other agencies will have the final determination as to appropriate and feasible traffic mitigation measures that will reduce or elimination significant impacts associated with the garage and other future development in the area.

2. 2015 Traffic Conditions.

By 2015, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The following changes could mitigate the cumulative conditions, at these intersections:

a. Fulton Street/Stanyan Street- Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions); the intersection operations would improve to LOS D, with an average delay of 33.6 seconds per vehicle.

b. Fulton Street/Eighth Avenue - With Concourse Garage Assumption A analyzed in the FEIR, Eighth Avenue was assumed to become the primary vehicle entrance to this area of Golden Gate Park, as discussed on p. 70. For this reason, there would be a substantial increase in traffic volumes at this intersection, leading to relatively high delays per vehicle at each approach. To improve the operating conditions at this intersection, provide an additional northbound lane and a westbound left-turn pocket. With these measures, the intersection operations would improve to LOS D, with an average delay per vehicle of 29.5 seconds. To create sufficient right-of-way for these measures, it would be necessary to remove on-street parking at the northbound and westbound approaches. It should be noted that on-street parking along Eighth Avenue within the park may be eliminated in conjunction with the Music Concourse Garage, resulting in sufficient right-of-way for the additional northbound travel lane.

c. Tea Garden Drive/Eighth Avenue - With Garage Assumption A, the increase in traffic volumes at the Eighth Avenue entrance would also result in poor operating conditions at the intersection of Tea Garden/Eighth Avenue. Providing two lanes at the southbound approach would improve the operating conditions to LOS C at the worst approach. This measure would require designation of right-of-way, as part of planning for the Concourse area.

Because the Project contributes to the 2015 cumulative traffic conditions that would result with implementation of Garage Assumption A, the project proposed for the Academy of Science and the Project, mitigation would be required to reduce these cumulative impacts to a nonsignificant level. At the intersection of Fulton Street/Stanyan Street (which would operate at LOS D under 2015 cumulative conditions), the Project would contribute 7.6% of the growth in traffic volumes and 1.3% of the total 2015 cumulative volumes. At the intersection of Fulton Street/Eighth Avenue (also at LOS D under 2015 cumulative conditions), the Project would contribute 26.1% of the growth in traffic volumes and 6.5% of the total 2015 cumulative volumes. At the intersection of Tea Garden Drive/Eighth Avenue (at which the worst approach would operate at LOS E under 2015 cumulative conditions), the Project would contribute 41% of the growth in traffic volumes and 14% of the total 2015 cumulative volume. The impacts could be exacerbated to some degree with vehicle trips generated by the Project; however, these impacts would not result from Project vehicle trips alone. Until final plans for the garage are developed, it is impossible to know whether implementation of these mitigation measures would be appropriate or feasible given the garage configuration and location of entrances to the garage. These measures are not necessary to mitigate a Project impact if only the Project were implemented without other future development, nor are they feasible for implementation in connection with the Project as the Garage Concourse Authority and other agencies will have the final determination as to appropriate and feasible traffic mitigation measures that will reduce or eliminate significant impacts associated with the garage and other future development in the area.

B. Mitigation Measures Proposed as Part of the Project And Adopted By the Board of Trustees. The following mitigation measures in the FEIR are found by the Board of Trustees to mitigate, reduce or avoid potentially significant environmental effects and are adopted by the Board of Trustees, with monitoring by other City agencies as set forth in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit 2, and have been incorporated into the Project:

1. Air Quality.

Because the Project would not exceed 2,000 vehicle trips per day, the Project would not exceed established CO thresholds and, therefore, Project air quality impacts would be less than significant. The Project also would not contribute significantly to cumulative air quality impacts. *See* FEIR, pp. 75-78. For these reasons, no mitigation is required. However, the following measures have been proposed as part of the Project, and are included in the Mitigation Monitoring and Reporting Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

a. The Project Sponsor would require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.

b. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the Project Sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The Project Sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulate and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions from equipment that would be in frequent use for much of the construction period.

2. Noise.

No significant noise impacts resulting from the Project have been identified. However, the Initial Study recommended that the following mitigation measure be adopted to mitigate any impacts on adjacent buildings or receptors in the Project vicinity associated with noise generated from construction activities. This measure has been proposed as part of the Project and is included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts this measure as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

V. The Project Sponsor would require project construction contractor(s) to pre-drill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the Project Sponsor would also require that contractors limit pile-driving activity to result in the least disturbance to neighbors.

1. Geology/Topography.

No significant geology/topography impacts associated with the Project have been identified. However, the Project site is located in an area subject to ground shaking from earthquakes along the San Andreas and Northern Hayward Faults, and other faults in the San Francisco Bay Area. It is not in an area of liquefaction potential. To ensure compliance with all San Francisco building codes, the following measures have been proposed in the Initial Study. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

a. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The Project Sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The Project Sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.

b. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building

Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgment of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The Project Sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor.

VI. If dewatering were necessary, the Project Sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.

a. The Project Sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.

2. Water Quality.

No significant water quality impacts associated with the Project have been identified. However, because dewatering could be required during Project construction, the Initial Study identifies the following measure. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

VII. The Project Sponsor would ensure that groundwater from site dewatering and stormwater runoff meets the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:

VIII. a. If dewatering were necessary, the Project Sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.

IX. If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.

X. b. The Project Sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.

1. Hazards.

No significant hazard impacts associated with the Project have been identified. However, the Initial Study proposes adoption of the following mitigation measures to address potential health and safety issues related to future hazardous materials use, contaminated soil and groundwater, potentially hazardous building components, and fire safety and emergency access. These measures would reduce the potential impacts to less-than-significant levels. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq*. At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

> a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

XI. If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

XII. If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.

a. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.

b. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous materials have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.

B. Adoption of Mitigation Monitoring Program.

The Board of Trustees hereby adopts a Mitigation Monitoring Program as required by Section 21081.6 of the California Public Resources Code. This Mitigation Monitoring Program is attached hereto as Exhibit 2 and is incorporated herein by reference. The purpose of this Program is to determine the stage at which each of the adopted mitigation measures must be imposed in order to ensure that the measure is carried out by the responsible official or entity, or, if the obligation lies with the Board of Trustees, that the City enforces the obligation.

XIII. SIGNIFICANT ENVIRONMENTAL IMPACTS

While no significant adverse environmental impacts associated with the Project have been identified, the following findings relate to cumulative traffic impacts, areas that were either discussed in the Draft EIR to determine whether the Project would result in a significant impact, or areas which commentors on the Project claimed would result in significant adverse impacts.

A. Significant Environmental Impacts

1. Cumulative Transportation Impacts. With the Project and Music Concourse Garage Assumption A (this assumes that the only access point to the garage would be at the intersection of Fulton Street/Tenth Avenue), the intersection of Fulton/Stanyan would change from LOS D to LOS E. The impact that would be addressed by this measure would be the significant impact associated with Garage Assumption A. The impact could be exacerbated to some degree with vehicle trips generated by the Project; however, this impact would not result from Project vehicle trips alone. By 2015, if Garage Assumption A is implemented and the Academy of Science Project proceeds, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS D, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The Project's contribution to the 2015 cumulative traffic conditions would not be significant The Project's contribution to 2015 cumulative conditions at the intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would not be substantial. At the intersection of Tea Garden Drive/Eighth Avenue (at which the worst approach would operate at LOS E under 2015 cumulative conditions), the Project would have a less-than-significant contribution to the LOS E conditions at only one approach to this stop-sign controlled intersection.

2. Other Impacts. Potentially significant environmental impacts with respect to air quality, noise, geology/topography, water quality and hazards have been addressed with mitigation measures incorporated as part of the Project to be adopted by the Board of Trustees.

B. Impacts Determined Not To Be Significant.

1. Air Quality. Because the Project would not exceed 2,000 vehicle trips per day, the Project would not exceed established CO thresholds and, therefore, Project air quality impacts would be less than significant. The Project also would not contribute significantly to cumulative air quality impacts.

2. Land Use and Zoning. No land use and zoning impacts associated with the Project were identified. The Project proposes a replacement building for the M.H. de Young Museum and would not introduce a new use at the site. This topic was discussed in the FEIR for informational purposes only.

3. Visual Quality. The Project would alter views from the Music Concourse, Tea Garden Drive and John F. Kennedy Drive, and would replace views of the M.H. de Young Museum and Asian Art Museum buildings. The new building would be set back further from Kennedy Drive and would have a smaller footprint, providing additional area for landscaping and new locations from which visitors could view and

experience park elements and features. The Project would not substantially change the pastoral character of landscape along Kennedy Drive, would not affect Special Horticultural Areas, including the Hagiwara Japanese Tea Garden and would not substantially change areas of Naturalistic Parkland, or other important landscape features or areas identified in the Golden Gate Park Master Plan.

The proposed educational tower, at 144 feet tall, would be about 19 feet taller than the existing tower and about 14 feet higher from grade at Tea Garden Drive. While the new tower would have a more dominant presence, particularly from certain vantage points, than the existing tower, it does not introduce a new building element into the Music Concourse area or on the Project site. The tower design provides variation in its massing which would lessen the appearance of bulk and would create different visual impressions depending on the vantage point. The design also would create shading on portions of the tower which would lessen any visual effect associated with the tower envelope. The facade of the new tower would have areas of solid wall and glazed window areas. Within the Concourse itself, the pedestrian would likely be more oriented to the lower scale of the main building element, due both to the location of the tower on the site (set back further from Tea Garden Drive) and the introduction of additional amenities at the street level (Garden of Enchantment and Sculpture Garden, along with additional landscaped areas). As with the existing tower, the new tower would not impede views of any specific Park elements or historic features.

While the tower would be visible at locations inside and outside the Park, in considering the overall scale of Golden Gate Park, including Strawberry Hill to the west of the Project site and the dense tree canopy and naturalistic plantings around the existing museum, as well as the urban character of the Park's surroundings, the increased tower height is not significant. These changes would not significantly alter park visitors' experience or disrupt the educational, cultural and recreational uses of this area of Golden Gate Park. Views from outside the Park would be partially screened by trees and would not be considered significant adverse effects.

The differences between the existing museum buildings and the proposed project, including the different tower designs, will create a different visual impression and experience. While the tower will be taller with more depth than the existing tower, the overall building footprint will be reduced and additional landscaped areas provided on site. These changes and the new proposed building, including the tower, would not have a substantial, demonstrable negative aesthetic effect, nor would they result in a substantial degradation or obstruction of any scenic view or vista that is now observed from public areas from the Music Concourse area or the Park.

While the architectural character of the new de Young Museum would differ from that of the existing museum, the overall height, scale and massing of the new structure would not demonstrate a negative aesthetic effect on the visual character of the surrounding area.

No exterior effect lighting for the tower is proposed, although the existing tower is lit at night. Only lighting for life/safety or security purposes is planned, primarily around the base of the tower. The planned programmatic uses of the areas within the tower may operate during evening hours and lighted areas within the tower may be visible from outside the museum at these times. However, no special lighting is planned for any areas beyond that which would be typical to standard classroom type space, and the observation area on the top floor would incorporate minimal lighting levels so that if used at night, the interior lighting would not conflict with views out. Any increase in visibility due to periodic nighttime lighting would be similar to other structures within Golden Gate Park, including the existing museum buildings. The new building would be on an energy management system so that lights would go out when areas were not in use. While nighttime lighting inside the tower would be visible from certain vantage points outside the Park, this lighting would not be obtrusive given the urban context of areas surrounding the Park and would not substantially impact other properties due to the distance of the tower from areas outside the Park.

For all of these reasons, the Project would not have demonstrable negative aesthetic effects on the character of the surrounding area or degrade or obstruct scenic views from public areas and, therefore, would not have any significant adverse visual quality impacts.

4. Shadow. Over the course of the year, without considering the existing dense tree cover, the Project would cast limited shadow on portions of the lawn and playground area north of the Project site across John F. Kennedy Drive for approximately one hour, from 3:00 p.m. to 4:00 p.m. in the afternoon from mid-November to late January. This shadow, totaling about 75 hours of new shadow and representing less than two percent (2%) of daylight hours, would be cast only during a time of year when weather conditions would tend to be either overcast or rainy. Use of the lawn area and playground would likely be less during November to January due to lower daytime temperatures, inclement weather and because twilight and sunset would be earlier. Observations conducted by the EIR preparers during the month of September indicate that visitors use the lawn and playground area under a variety of shade and sun conditions. The Project's intermittent shadow effects would not be expected to adversely affect the use or enjoyment of these areas of the Park. Taking into consideration the existing dense tree cover, no new areas are in shadow that are not already affected by shading from trees.

With the Project, there would be substantial reduction in shading of the Japanese Tea Garden and the Music Concourse that occurs with the existing museum buildings. The Project would cast very limited new shadow on the edge of the Rhododendron Dell located east of the Project site; this area would already be in shade from existing tree coverage. Project shadows on the lawn and playground areas and the Rhododendron Dell would not be considered a significant adverse impact.

Limited project shadows on residential areas north of Fulton Street would occur for up to one-half hour for about one month in mid-December to mid-January; this does not take into account shading from existing structures on private yards or windows in adjacent structures or shadows from existing dense tree plantings along Fulton Street. These limited shadow effects would not be considered significant adverse effects.

5. Cultural Resources. No significant cultural resources impacts resulting from the Project have been identified. None of the eight buildings on the site meet the definition of historic resource as defined in CEQA and the CEQA Guidelines. There are no historic districts or properties listed in City, state or federal inventories on the Project site. The de Young Museum is not listed on the National or California Registers nor has it been determined eligible for listing in either the California Register or the National Register. The museum is not subject to the provisions of Articles 10 or 11 of the City's Planning Code. The existing eight museum buildings have been constructed at different times, reconstructed and substantially altered over time. They do not represent a cohesive overall architectural character and are an amalgam of cumulative changes. They do not have any distinguishing architectural or historical merit. The museum as an institution is associated with Michael H. de Young; it is the institution and not the physical structures which carry an association with Mr. de Young. The museum will remain, reconstructed in an integrated building that will house the museum's collection.

The original museum, constructed in 1894 for the California Midwinter International Exposition, was added onto in stages between 1917-1921. Michael de Young died in 1925 and the original 1894 Museum building was demolished after his death at the time that the museum was expanded in the late 1920's. Due to structural problems with the building exterior, in 1949 the exterior was remodeled. In 1953, another addition to the building followed. In 1964, the west wing of the building was demolished, followed by numerous interior alterations to the interior of the east wing. After damage caused to the museum in the Loma Prieta earthquake in 1989, the building exterior has been braced with a system of exposed exterior steel, concrete buttresses and steel roof plates. The substantial alterations of the existing museum structures over time, seismic problems and corrective bracing have impacted and severely compromised the integrity of the structures.

The buildings existing today no longer bear a resemblance to the original 1894 building or the building as it existed at the time of Mr. de Young's death. The site is associated with its long standing use for the museum founded by Mr. de Young. This use will continue.

Because the buildings do not constitute historical resources, their demolition does not constitute a significant environmental impact.

The new museum would not detract from, or adversely impact, the overall context of the Music Concourse or the historic resources located in the Music Concourse, including the Spreckels Temple of Music and the Japanese Tea Garden, and, hence, would not adversely affect the ability of the Concourse to qualify as part of a historic district, nor would the new Museum adversely affect the ability of Golden Gate Park to qualify as a historic district or otherwise for listing on the National Register of Historic Places. While the siting of the existing museum buildings are such as to relate across from and adjacent to the Academy of Science and the Spreckels Temple of Music, respectively, and in that way form an overall relationship and context within the Music Concourse, the existing buildings do not provide any continuity of design with, the other Concourse structures and the museum's physical relationship with the Concourse and the other structures would not substantially change as a result of the Project. The new de Young is designed to retain the relationship with the Academy of Science and the Spreckels Temple of Music, while increasing landscaped areas within the Concourse area and as a buffer to the Japanese Tea Garden. The new building would provide a greater integration with the natural landscape of the Park than does the existing museum.

Measures will be taken during Project construction to protect the Japanese Tea Garden and other landscape features from vibrations and other construction activites that could cause damage to this area and to protect other structures within the Music Concourse.

The Page & Turnbull Report elaborates on the information regarding historic resources, but reaches the same conclusions as those in the Initial Study and FEIR. Construction of the Project would not adversely affect any existing or potential historic resources, as discussed in the Page & Turnbull Report and the FEIR.

C. Adequacy of FEIR

Although the Educational Tower has been modified, this Board of Trustees finds that (1) modifications incorporated into the Project and reflected in this approval did not and will not require any major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken which would require any major revisions to the FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIR; and (3) no new information of substantial importance to the Project has become available which would indicate (a) the Project will have significant effects not discussed in the FEIR, (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FEIR would substantially reduce one or more significant effects on the environment.

XIV. UNAVOIDABLE SIGNIFICANT ENVIRONMENTAL IMPACTS

In the event that the proposed mitigation measures are not implemented in the future to address the cumulative significant environmental impacts on traffic conditions, the following unavoidable significant environmental impacts may result. The cumulative impacts of implementation of the Project and Music Concourse Garage Assumption A would result in the signalized intersection of Fulton Street/Stanyan Street changing from LOS D to LOS E. By 2015, with implementation of the Project and Music Concourse Garage Assumption A, and other development including the Academy of Science, it is anticipated that three intersections could operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E.

XV. STATEMENT OF OVERRIDING CONSIDERATIONS

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, the Board of Trustees finds, after considering the FEIR, that specific overriding economic, legal, social and other considerations, as set forth below, outweigh the identified significant effects on the environment. In addition, the Board of Trustees finds that those Project Alternatives and mitigation measures described in the FEIR that have been rejected, are also rejected for the following specific economic, social or other considerations, in and of themselves, in addition to the specific reasons discussed in Article III above. The benefits of this project include:

- State-of-the-art seismic engineering, including base isolation, will ensure safety of visitors and collections;
- State-of-the-art heating, ventilating and air conditioning systems will provide comfort for visitors as well as collection protection executed through energy efficient and sustainable design;
- Interior courtyards will "bring the Park into the building" and vistas from the building out into the Park, improving the relationship of the museum to the Park and enhancing the visitor experience with natural light and visual connections to the Park;
- Four entrances, improved ADA access, one third of museum including the Education Tower free to the public, a school bus and visitor drop-off zone, all of which greatly improve access and convenience for visitors;
- Twice the exhibit space to accommodate growing collections and an innovative, non-hierarchical layout that allows for cohesive and integrative presentations of diverse collections;
- Expanded, state-of-the-art collection management and conservation areas to ensure safety and provide for on-going treatment and care of the collections;
- The Education Tower will double functional areas necessary to meet increased demand for educational programming and will be a critical symbol for the educational commitment of the Museum. The children's art gallery will be free, the teachers' resource center, artists' studio and library will expand and be open to the public;
- The Education Tower will maintain the tradition of the iconic image of the de Young with a tower but will be accessible to the public for the first time. Views from the tower of the beauty of Golden

Gate Park will enhance the visitor experience and increase the connection between the Museum and the Park;

- State-of-the-Art temporary exhibition space and supporting areas will allow the Museum to attract world-class, exciting temporary exhibitions to San Francisco which would otherwise not be available to Northern California;

- Reduced building footprint allows increased landscaped areas (over 80,000 sq. ft.), better building and landscape integration, significantly increased landscaped separation between the Museum and the Japanese Tea Garden, and expanded public areas;

- Two new public amenities will integrate the park experience and museum program: a sculpture garden in the new landscaped area between the Museum and the Tea Garden and a children's garden incorporating the Pool of Enchantment, sculpture and a children's activity area;

- Building scale and orientation retains and improves on tradition of building's orientation to the Concourse and area road-ways through its formal entry from the Concourse, set-back from Tea Garden Drive and increased set-back from JFK Drive;

- Restaurant opening into the Park continues the Oakes Garden tradition of providing a quiet contemplative place to rest and enjoy the Park environment;

- Expanded and improved visitor amenities, such as the tower library reading room will make the Museum, its programs and collections more accessible and comfortable;

- A distinctive institution that will advance the de Young as a landmark American art museum: a forward thinking, beautiful, and visitor-friendly facility that serves and attracts the local community, regional visitors and tourists alike; and

- An outstanding museum at no cost to the taxpayers of San Francisco. The funds for this project are being raised privately. It will be the largest gift to the public in San Francisco's history and at the time of this application, the largest private gift to a public cultural institution in the entire United States. Over $150 million has already been raised from approximately 6,000 individuals and foundations.

Having considered these Project benefits, including the benefits discussed in Article III, the Board of Trustees finds that the benefits of the Project outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

EXHIBIT 1

NEW DE YOUNG MUSEUM FEIR MITIGATION MEASURES

A. TRANSPORTATION

The following measures were identified in the Project FEIR but will not be implemented in connection with the Project.

1. Cumulative Traffic Conditions

With the project and Music Concourse Garage Assumption A, the intersection of Fulton/Stanyan would change from LOS D to LOS E. To avoid this impact, prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (from 4:00 to 6:00 PM). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds.

2. 2015 Traffic Conditions

By 2015, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The following changes could mitigate the cumulative conditions, at these intersections:

a. Fulton Street/Stanyan Street- Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions); the intersection operations would improve to LOS D, with an average delay of 33.6 seconds per vehicle.

b. Fulton Street/Eighth Avenue - With Concourse Garage Assumption A analyzed in the EIR, Eighth Avenue was assumed to become the primary vehicle entrance to this area of Golden Gate Park, as discussed on p. 70. For this reason, there would be a substantial increase in traffic volumes at this intersection, leading to relatively high delays per vehicle at each approach. To improve the operating conditions at this intersection, provide an additional northbound lane and a westbound left-turn pocket. With these measures, the intersection operations would improve to LOS D, with an average delay per vehicle of 29.5 seconds. To create sufficient right-of-way for these measures, it would be necessary to remove on-street parking at the northbound and westbound approaches. It should be noted that on-street parking along Eighth Avenue within the park may be eliminated in conjunction with the Music Concourse Garage, resulting in sufficient right-of-way for the additional northbound travel lane

c. Tea Garden Drive/Eighth Avenue - With Garage Assumption A, the increase in traffic volumes at the Eighth Avenue entrance would also result in poor operating conditions at the intersection of Tea Garden/Eighth Avenue. Providing two lanes at the southbound approach would improve the operating conditions to LOS C at the worst approach. This measure would require designation of right-of-way, as part of planning for the Concourse area.

All of the remaining mitigation measures set forth below are proposed as part of the Project.

B. AIR QUALITY

1. The project sponsor would require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.

2. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The project sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulate and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions from equipment that would -be in frequent use for much of the construction period.

C. NOISE

The project sponsor would require project construction contractor(s) to predrill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the project sponsor would also require that contractors limit pile-driving activity to result in the least disturbance to neighbors.

D. GEOLOGY / TOPOGRAPHY

1. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The project sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The project sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.

2. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgement of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The project sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor.

   If dewatering were necessary, the project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.

3. The project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.

Exhibit 1

E. WATER QUALITY

The project sponsor would ensure that groundwater from site dewatering and stormwater runoff meets the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:

1. If dewatering were necessary, the project sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.

   If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.

2. The project sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.

F. HAZARDS

In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq.* At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.

b. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.

c. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous materials have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.

EXHIBIT 2

NEW DE YOUNG MUSEUM - MITIGATION MONITORING AND REPORTING PROGRAM

Introduction

Assembly Bill (AB) 3180 was enacted by the State Legislature to provide a mechanism to ensure that mitigation measures adopted through the California Environmental Quality Act (CEQA) process are implemented in a timely manner and in accordance with the terms of project approval. Under AB 3180, local agencies are required to adopt a monitoring or reporting program "designed to ensure compliance during project implementation."

The New de Young Museum Mitigation Monitoring Program ("Mitigation Monitoring Program"), pursuant to AB 3180 CEQA Section 21081.6 and CEQA Guidelines Section 15091 provides the basic framework through which adopted mitigation measures will be monitored to ensure implementation. The full text of the measures as they appear in the FEIR is contained in Exhibit 1 to the New de Young Museum California Environmental Quality Act Findings.

The following table identifies, for each mitigation measure included in the FEIR, the measure, the party responsible for implementing the measure, the time frame for implementation, assigns monitoring responsibility and establishes monitoring actions and a schedule for mitigation monitoring.

While this Program generally outlines the actions, responsibilities, and schedule for mitigation monitoring, it does not attempt to specify the detailed procedures to be used to undertake or verify implementation (e.g., interactions between City departments, use of private consultants, approval of plans, site inspections, etc.). Specific monitoring procedures are either contained in approval documents or will be developed at a later date, closer to the time the mitigation measures will actually be implemented.

Exhibit 2 - NEW DE YOUNG MUSEUM MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
1. **TRANSPORTATION**				
a. Cumulative Traffic Conditions.				
Prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (4:00 to 6:00 p.m.). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds.	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
b. 2015 Traffic Conditions.				
i. Fulton Street/Stanyan Street - Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions).	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
ii. Fulton Street/Eighth Avenue - If Concourse Garage Assumption A analyzed in the EIR is adopted, with Eighth Avenue as the primary vehicle entrance to this area of Golden Gate Park, provide an additional northbound lane and a westbound left-turn pocket.	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
iii. Tea Garden/Eighth Avenue - If Garage Assumption is adopted, provide two lanes at the southbound approach.	DPT/Recreation & Park Dept/Concourse Authority	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
2. AIR QUALITY				
a. Require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
b. Require the contractor(s) to obtain reclaimed water from the Clean Water Program and use for duct control activities, in accordance with Ordinance 175-91, passed by the Board of Supervisors on May 6,1991.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
3. NOISE				
Require project construction contractor(s) to pre-drill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the project sponsor would also require that contractors limit pile-driving activity to result in the least disturbance to neighbors.	Project Sponsor	As required during construction activities	Ensure implementation as part of site permit process	DBI

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
4. **GEOLOGY / TOPOGRAPHY**				
a. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The project sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The project sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.	Project Sponsor	Prior to commencement of, and during, construction	Ensure implementation as part of site permit process	DBI
b. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgment of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The project sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
If dewatering were necessary, the project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.				DBI
c. The project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
5. **WATER / QUALITY**				
The project sponsor would ensure that groundwater form site dewatering and stormwater runoff meet the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
a. If dewatering were necessary, the project sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system. If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
b. The project sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

6. HAZARDS

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq.* At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.	Project Sponsor	Prior to issuance of demolition permits	Ensure implementation as part of site permit process	DBI/DPH
a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.	Project Sponsor	Prior to issuance of demolition permits	Ensure implementation as part of site permit process	DBI/DPH

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site. If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.				

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
b. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.	Project Sponsor	Conduct surveys prior to issuance of demolition permit	Ensure implementation as part of demolition and site permit process	DBI/DPH
c. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous material have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.	Project Sponsor	Submit reports after removal of all hazardous materials and completion of soil and groundwater analysis	Ensure implementation as part of demolition and site permit process	DBI/DPH

Appendix E

DOCUMENTS DEPT.
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EXECUTIVE SUMMARY OF LEASE AND FACILITIES AGREEMENT FOR NEW M.H. DE YOUNG MUSEUM

1. Overview. The purpose of this lease is to enhance the creditworthiness of the bonds. To the greatest extent possible, the lease avoids trying to re-characterize or re-define the roles or responsibilities of the FAM under the Charter or the Administrative Code. Instead, those laws are simply incorporated by reference so that if they are amended at a later date, those changes will occur automatically without having to amend the lease itself.

The lease codifies FAM's relationship with the Foundation (for at least the term of the bonds) and preserves for FAM maximum flexibility in making future decisions regarding the Museum while still achieving the underlying goal of enhancing the creditworthiness of the bonds. Furthermore, in recognition of the Tenant's charitable function, it also shields the Foundation from open-ended financial and legal liabilities. In this regard, the lease in many respects operates more like a management agreement (with the Foundation managing the City's asset pursuant to the City's direction) than a lease (where the City would normally transfer most of the control and the financial obligations and liabilities to the Foundation).

In light of the forgoing and to preserve in FAM the flexibility to define the respective roles and responsibilities of the City and the Foundation for the use and operation of the new Museum for the next 35 years, the lease sets forth processes for allocating rights and responsibilities instead of attempting to specifically allocate those rights and responsibilities in the lease itself. The key element of that process-oriented approach is a requirement that FAM approve each year a management plan governing the use and operation of the Museum.

2. Term. The term of the lease is coterminous with the term of the debt, up to a maximum of thirty five years, subject to earlier termination either in the event of an uncured default or if the new Museum has not been built by some (as yet to be determined) outside completion date.

3. Rent. None. General admission revenues continue to be collected, received and distributed in accordance with the City's Administrative Code. The Foundation retains all excess general admission revenues distributed to the Foundation under the Administrative Code and all non-general admission revenues, provided they are expended on either (i) debt service or other costs related to the bonds or (ii) to support FAM in its programs (including at the de Young and the Legion of Honor).

4. Negative Pledge. The principal way in which the lease enhances the creditworthiness of the bonds is through a negative pledge, which imposes a strict limitation on FAM's ability to encumber or otherwise dispose of the premises during the term of the lease. Specifically, the lease prohibits FAM from creating any new encumbrance on the premises, without the prior written consent of the Foundation and limits FAM's ability to sell or otherwise dispose of a material portion of the premises.

5. Permitted Use; Maintenance and Operations. The lease also guarantees the Foundation's participation in the Museum for the life of the bonds. The lease requires the premises to be used as a public museum and for related ancillary uses approved by FAM in any annual Management Plan. Rates and charges remain the jurisdiction of FAM as set forth in the City's Charter and Administrative Code. The relative rights and responsibilities of the City and the Foundation for maintenance and operation of the Museum shall be set forth in each year's Management Plan.

6. Construction. The lease does not govern construction of the new project or address issues related to accessing the site for construction, construction schedules and standards, performance guarantees etc. Rather, the lease only addresses operation of the new Museum after it is built. Thus, although the lease would be signed and become effective as soon as it is finally approved, the lease term would not commence until the new Museum is "substantially complete". For this purpose, issuance of a temporary certificate of occupancy would evidence "substantial completion". Subsequent construction or material alterations require prior FAM approval.

7. Assignment. The Foundation is free, under the lease, to exercise its reasonable business judgment to enter into contracts with third-parties to provide services to the Museum, consistent with any approved Management Plan. Subject to the prior approval of FAM's Director, the Foundation may assign or sublet its actual rights and

responsibilities under the lease to third parties, including COFAM. Assignment or transfer of the entire lease is subject to the prior approval of the FAM Director and the full Commission.

LEASE AND FACILITIES AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its
BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO
as Landlord

and

FINE ARTS MUSEUMS FOUNDATION
as Tenant

For the lease of

_____ ± acres and improvements thereon located in
San Francisco, California

____________________, 2002

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LEASE AND FACILITIES AGREEMENT

THIS LEASE AND FACILITIES AGREEMENT (this "Lease") dated to be effective as of **[March 1, 2002]**, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO (the "Commission") (collectively, "City" or "Landlord"), and the FINE ARTS MUSEUMS FOUNDATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The Commission is a commission of the City, organized and operating under the provisions of Article V of the 1996 Charter of the City and County of San Francisco (the "Charter").

B. The Commission is responsible under Charter Section 5.105 for the protection and conservation of the assets of M.H. deYoung Memorial Museum (the "Museum") and the California Palace of the Legion of Honor (the "Legion"). The Museum is not currently in operation, and any continued operation of the existing museum facilities is not feasible, primarily because of concerns regarding the ability of such facilities to withstand certain seismic events.

C. The Tenant's mission is to support the activities of the Commission. In furtherance of such mission, the Tenant manages an endowment (the "Endowment") for the enrichment and benefit of the Commission, and plays a critical role in helping to defray the Commission's costs of operating the Museum and in raising the level of private contributions and developing Museum membership.

D. The City owns certain real property located in Golden Gate Park, San Francisco, California, a portion of which contains the Museum and other related buildings, improvements or areas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (collectively, the "Premises"). The Premises are under the jurisdiction of the Commission.

E. Pursuant to Charter Section 5.101, the Commission has exclusive charge of the assets under its jurisdiction, including the Premises and any other land or buildings set aside for its use, and has the authority to maintain, operate, manage, repair or construct new buildings, and to make and enter into contracts relating thereto, subject insofar as City funds are to be used, to the budgetary and fiscal provisions of the Charter.

F. The building of a new M.H. de Young Memorial Museum in Golden Gate Park is the highest institutional priority for the Commission and the Tenant. Accordingly, on _____________ the Commission approved of the construction of a new museum facility and related improvements for the Commission, to be located on the Premises (collectively, the "Project"). The Project will consist of (i) the construction of the new museum facility, and (ii) the planned new museum facility as completed. The plan of construction for the Project includes demolition of the existing Museum and construction of an approximately 300,000 square foot new museum facility. The new museum facility includes gallery space, a main lobby, courtyard, educational spaces, inner courtyards, café, museum store, observation tower area, curatorial and museum administration offices, a loading dock, art storage and conservation space, and other museum-related uses. The Commission does not have funding to permit the Commission to perform seismic retrofitting of the Museum or to construct the Project. Tenant and the Corporation of the Fine Arts Museums ("COFAM") have offered to accept primary responsibility for constructing the Project, which, when completed, will be the new M.H. deYoung Memorial Museum. Upon completion of the Project, the Tenant shall give to the City the completed Project, including without limitation any Improvements located on the Premises, subject to any necessary approvals required by applicable Laws.

G. The Tenant and COFAM have raised at least $150,000,000 in completed and pledged gifts (the "Philanthropic Funds") in support of the design and construction costs of the Project, including development, administrative and other soft costs related thereto (the "Project Costs"), and are committed to a fund raising goal of $165,000,000.

H. In addition to raising Philanthropic Funds, the Tenant and COFAM will cause bonds to be issued initially in an amount not to exceed $185,000,000 (the "Bonds") in order to finance a portion of the Project Costs.

I. In furtherance of the Tenant's financing of a substantial portion of the Project Costs, the City and Tenant have negotiated and agreed upon the terms and conditions upon which City will lease the Premises to Tenant, and the Parties now desire to enter into this Lease upon all of the terms and conditions hereof.

J. All initially capitalized terms used herein are defined in Appendix A attached hereto or shall have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section 1 and any more specific provision of this Lease, the more specific provision shall control.

Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO
Tenant:	FINE ARTS MUSEUMS FOUNDATION, a

	California nonprofit public benefit corporation
Premises (Section 3.1):	That certain land located in the City and County of San Francisco, California, more particularly described in Exhibit A-1 attached hereto and shown on the map attached hereto as Exhibit A-2, together with all Improvements now or hereafter located thereon, including the Project.
Term (Section 4):	The Lease shall commence upon the Completion (as defined below) of the Project (the "Commencement Date") and shall expire as of the earlier of: (a) thirty-five (35) years from the Commencement Date, (b) the date as of which any indebtedness and all other amounts due under the Indenture shall have been paid or provision for their payment shall have been made in accordance with said Indenture, or (c) the date as of which this Lease terminates in accordance with the terms of this Lease.
Use (Section 8):	The Premises shall be used as a Museum open to the public in accordance with the terms and conditions of this Lease and applicable Laws.
Notice Address of City (Section 30.1):	Board of Trustees of the Fine Arts Museums of San Francisco 233 Post Street, 6th Floor San Francisco, CA 94108-5003 Attn: Harry S. Parker, III Director of Museums Fax No.: (415) 750-7686
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Team Leader, Real Estate, Finance and Special Projects Team Fax No.: (415) 554-4755
and to:	Office of the Controller City Hall, Room 316 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682

	Attn: Controller Fax No.: (415) 554-7466____________
and to:	Office of Public Finance City Hall, Room 336 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Director Fax No.: (415) 554-4864
Key Contact for City:	Director of Museums
Telephone No.:	(415) 750-3661
Alternate Contact for Landlord:	Deputy Director for Administration and Finance
Telephone No.:	(415) 750-3666
Notice Address of Tenant (Section 30.1):	Fine Arts Museums Foundation 233 Post Street, 6th Floor San Francisco, CA 94108
Key Contact for Tenant:	President of Tenant
Telephone No.:	(415) 750-3682
Alternate Contact for Tenant:	Secretary of Tenant
Telephone No.:	(415) 750-3682
Brokers (Section 30.9):	None.

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in Appendix A attached hereto and incorporated herein by reference.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the Premises, together with any and all Improvements existing thereon, including the Project, all of which shall be owned by City, and all easements and appurtenant rights to the Premises; excluding therefrom and reserving unto City, its successors and assigns, the Reserved Rights relating to the Premises as described in Appendix A attached hereto and incorporated herein by reference.

3.2 Reserved .

3.3 As Is Condition of Premises.

(a) Inspection of Premises. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises, including, without limitation, (i) the quality, nature, adequacy and physical condition of the Premises, and all other physical and functional aspects of the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Premises (including Hazardous Materials conditions); (iii) the suitability of the Premises for the Project; (iv) the zoning, land use regulations and other Laws governing use of or construction on the Premises; and (v) all other matters of material significance affecting the Premises and uses thereof under this Lease. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises are being leased by City to Tenant, and Tenant hereby accepts the Premises are being leased by City to Tenant, and Tenant hereby accepts the Premises in their existing state and condition, "AS IS, WITH ALL FAULTS" and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Tenant acknowledges and agrees that neither City. the Commission nor any of the other Indemnified Parties, nor any Agent of any of them, has made, and there is hereby disclaimed, any representation or warranty, express or implied, of any kind by Tenant with respect to the condition of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, leases, and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature of adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials, in, on, under, above or about the Premises, (including, but not limited to, soils and groundwater conditions) or the physical condition of the new Museum once the Project is complete, (ii) any Laws applicable thereto, including, without limitation, Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant's Initials: _____

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the Commencement Date as defined below. The Term of this Lease shall end on the Expiration Date defined below, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date. The Term of this Lease shall commence on the first day of the first full month following the date of Completion of the Project (the "Commencement Date"). The "Expiration Date" shall be the earlier to occur of: (i) the date thirty-five (35) years from the Commencement Date, (ii) the date as of which any indebtedness and all other amounts due under the Indenture shall have been paid or provision for their payment shall have been made in accordance with said Indenture, or (iii) the date as of which this Lease is terminated pursuant to the provisions hereof. Tenant shall execute and deliver to City a memorandum confirming the Commencement Date substantially in the form attached hereto as Exhibit D, but Tenant's failure to do so shall not affect the commencement of the Term.

4.3 Effective Date. This Lease shall become effective on the later of (i) the date the City, in its sole and absolute discretion, approves this Lease, in accordance with all applicable Laws, and (ii) the date on which the Parties hereto have executed and delivered this Lease (the "Effective Date").

5. BOND ISSUANCE

5.1 Bond Issuance. The parties anticipate that the Bonds shall be issued on behalf of the Tenant for the purpose of financing or refinancing the Project, pursuant to the terms and conditions of a trust Indenture and other Bond Documents related to, evidencing or securing the Bonds. The Tenant covenants that it shall use Bond proceeds only to finance the construction or Completion of the Project and for any other purpose identified in the Bond Documents, including the refinancing thereof.

5.2 Consent of City to Issuance of Bonds. The City hereby consents to the issuance of the Bonds, subject to the terms and conditions of this Lease and the Bond Documents; provided, however, in no event shall this Lease or any of the Bond Documents create a debt of the Commission or the City, and nothing in the foregoing shall make or cause the Commission or the City to be liable for payment of debt service or other obligations of the Bonds; and provided, further however, such consent by the City shall not be deemed to be the approval by City of the Bonds or Bond Documents, and City offers no opinion related to the issuance of the Bonds and Bond Documents. Tenant agrees that a statement to such effect shall be printed on the Bonds.

5.3 Notification to Commission (with copies to City). The Tenant shall: (i) promptly provide to the Commission copies (with additional copies as proscribed by Section 1 above) of all prospecti and other offering materials relating to the Bonds, and copies of any annual or other disclosure statements relating to the Bonds; (ii) provide written notice to the Commission (with additional copies as prescribed by Section 1 above) within two (2) days of all default notices under the Indenture, Loan Agreement or any of the Bond Documents, or any other agreement for credit enhancement or liquidity for the Bonds; and (iii) provide written notice to the Commission (with additional copies as proscribed by Section 1 above) within two (2) days of any action the Tenant takes that might jeopardize the Tenant's legal status under Section 501(c)(3) of the United States Internal Revenue Code of 1986 (as amended, the "Code"), or any notices the Tenant might receive threatening revocation of its 501(c)(3) status or imposition of any intermediate sanctions.

5.4 Tax-Exempt Status of Bonds. The Commission shall not take or permit any action that would adversely affect the exclusion from gross income of interest on the Bonds pursuant to Section 103 of the Code.

5.5 Right of Termination. In the event that the Bonds are not issued on behalf of the Tenant on or before ____________________, 20__(the "Outside Bonds Issuance Date"), or construction of the Project is not completed on or before ____________________, 20__(the "Outside Project Completion Date"), the parties acknowledge and agree that the Commission shall have the right, at its election in its sole and absolute discretion, to (a) terminate this Lease by providing written notice thereof to Tenant, with such termination to be effective as of the date set forth in such termination notice, or (b) to extend the Outside Bonds Issuance Date or Outside Project Completion Date, as applicable. In the event of such termination, the Lease shall be of no further force and effect as of the termination date set forth in such notice, except for obligations which specifically survive the termination of the Lease.

5.6 Limitation on Encumbrances and Disposition of the Premises. During the Term of this Lease, the Commission shall not create any Encumbrance upon the Premises, except Permitted Encumbrances, without the prior written consent of Tenant. The Commission further agrees that it will not sell or otherwise dispose of any material part of the Premises unless the sale or other disposition thereof will not materially, adversely impair the structural soundness of the Premises or the revenue generating capacity of the Tenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) No Tax Liens. Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same.

(b) Reporting Requirement. Tenant agrees to provide such information as City may reasonably request to enable City to comply with any tax reporting requirements applicable to this Lease.

[CONFIRM WITH ASSESSOR RE: APPLICABILITY OF POSSESSORY INTEREST TAX]

7. TENANT'S PERSONAL PROPERTY

7.1 Tenant's Personal Property. All of Tenant's Personal Property shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 25 [Surrender] hereof; provided, however, Tenant acknowledges and agrees that Tenant's Personal Property specifically shall exclude all of the City's Personal Property. All of Tenant's Personal Property shall be removed by Tenant on or prior to the date of termination of this Lease or of any extension thereof. Prior to the commencement of operation, a list of trade fixtures to be included in Tenant's Personal Property shall be submitted in writing to City by Tenant.

8. USES

8.1 Permitted Uses.

(a) Museum. Subject to the terms and conditions of this Lease, the Premises shall be operated continuously for the benefit of the public as a public museum facility, including the ancillary uses set forth in Section 8.1(b) such as space for retail, office and maintenance functions related to the use and operation of the Museum, according to rules and regulations, rates, charges and hours of operation as may be established by the Commission from time to time.

(b) Management Plan. Tenant may use the Premises only to the extent set forth in any annual Management Plan (as defined in Section 9.1(a) below), and for no other purpose and in no other manner. The parties expect that each annual Management Plan shall authorize Tenant to perform functions related to the Museum that it and other non-profit corporations have historically performed for the Museum, including the following: (i) operating museum retail stores and other related activities, including without limitation, on-line merchandising activities, (ii) operating food and beverage service facilities, (iii) displaying the permanent collection of the Museum, (iv) providing curator services and publications related to the Museum, (v) sponsoring and presenting special exhibitions, events, lectures, cultural and educational programs relevant to the Museum's charitable purposes, (vi) hosting fundraising events, (vii) granting individuals and entities permission to use portions of the Premises for private events or functions on a short-term basis upon terms and conditions consistent with the City's standard form of permit, (viii) providing art conservation services for the City's permanent art collection and to institutions and members of the public, (ix) raising contributions and developing membership for the support of the Museum, (x) generating and collecting fee income from reproduction rights to images in the Museum's art collection, (xi) collecting special exhibition admission surcharges, (xii) occupying space for retail, office and maintenance functions related to the use and operation of the Museum, (xiii) providing administrative and marketing services for the Museum, (xiv) managing the Endowment, (xv) management of certain restricted funds, (xvi) purchasing art acquisitions, and (xvi) engaging in such other revenue-generating activities as may be approved by the Commission from time to time, in its sole and absolute discretion. The parties further expect that each annual Management Plan shall specify functions and services to be provided by the City, subject to annual appropriations and applicable Laws, consistent with such services as the City has historically performed for the Museum, including the following: (i) providing guard services, (ii) providing custodial services, (iii) performing maintenance on the Premises, including without limitation, providing stationery engineers and facility maintenance, (iv) providing utility services to the Premises, and (v) maintaining insurance for the City's art collection.

Except as expressly set forth in this Lease, all of the Tenant's activities in the Premises shall be subject to the approval of the Director or his or her designee, and such rules and regulations as may be imposed by the Commission from time to time. All revenues generated from such activities shall be governed by Section 10, below.

(c) Retail Operations; Facility Rentals. With respect to the operation of museum retail stores and other related retail activities, fundraising events and short-term facility rentals at the Premises approved by the Commission in any annual Management Plan, the parties agree as follows: (i) the Tenant will conform with customary museum practices and will consult with the Director with respect to content, style, price and aesthetic value, (ii) the Tenant will give the greatest consideration to the views of the Director and will comply with reasonable rules and conditions established by the Director, and (iii) the Tenant's activities will not conflict or interfere with other activities in the Premises. The Commission agrees that it shall cooperate with and assist the Tenant in carrying out these activities consistent with the Commission's cooperation and assistance to date, and the Commission shall not take any action that would materially impair these Tenant activities or the ability of the Tenant to generate revenue in connection with such activities.

(d) Commission Authority Over Facilities and Commission Operations. Notwithstanding anything to the contrary contained herein, the content, style, price and aesthetic value of all exhibitions, educational and cultural lectures and programs must be approved in advance by the Director and shall be subject to the jurisdiction of the Commission. The Commission, through its Director, shall continue to have authority to develop and administer the Museum and Premises, including its collections, facilities programs, activities and other operations, as set forth under Charter Section 5.100-5.102, and 5.105 and Administrative Code Sections 2A.155-2A.155.10, as such Laws may be amended from time to time. Nothing in this Lease shall be interpreted as interfering with or diminishing the Director's or Commission's authority to manage and control such collections, programs, activities and operations under such laws. Except as otherwise expressly set forth in this Lease, all of the Tenant's activities in the Premises shall be subject to the approval of the Commission or the Director or his/her designee, and such rules and regulations as may be imposed from time to time by the Commission or the Director. Subject to Section 8.1 hereof, nothing in this Lease shall be interpreted to interfere with or diminish the Director's and Commission's exclusive authority to determine the form and content of Museum programs and activities, nor shall anything in this Lease be interpreted to interfere with the terms and conditions of any gifts accepted by the Commission.

(e) Rates, Charges, Rules and Regulations. In accordance with the Administrative Code and Charter, the Commission may from time to time establish and thereafter modify all rates and charges for admission to the Museum and Premises, including base general admission fees and special exhibition surcharges, and reasonable rules and regulations for the use and operation of the Premises, including, without limitation, the hours and days of operation, restrictions on use, and the public uses and purposes permissible on or in the Premises. Tenant will comply with said rates, charges and rules and regulations.

(f) Commission Covenants.

(i) The Commission covenants and agrees that it shall not take or permit any action that would adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

(ii) The Commission covenants to enforce its rights to receive revenues in accordance with the current provisions of applicable Laws. The Commission shall take all reasonable actions and remedies to ensure that such revenues are promptly received by the Commission as provided by such Laws.

(g) **No Change to Charter.** Nothing contained in this Section 8.1 shall be construed to amend, alter or modify any obligations of the Parties under the Charter or any other applicable Law, including the City's Administrative Code. In the event of any conflict between the terms of this Lease and the Charter or Administrative Code, the terms of the Charter or Administrative Code, as applicable, shall govern. The Lease shall not provide to the Tenant a contractual right or remedy to enforce City obligations under the Charter.

8.2 Advertising and Signs. Tenant shall not allow the placement, construction or maintenance of any sign, advertisement, awning, canopy, banner or other exterior decoration of or on the Premises without obtaining the Commission's prior written consent. Any sign that Tenant or its subtenants are permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including, but not limited to, City's Sign Guidelines and all building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. City makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant at its sole cost and expense, and at the Commission's request, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

8.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Without limiting the generality of Section 8.1 [Permitted Uses] above, Tenant shall not conduct or permit on the Premises any Prohibited Activities (as defined in Appendix A attached hereto) without the prior written consent of the Commission:

8.4 Museum Name; Use of Marks. Except as specifically provided below, Tenant shall use the name "M.H. deYoung Memorial Museum" as the name of the museum facilities located on the Premises. Any other reference to or naming of the Museum, in connection with advertising or promotional materials or otherwise, shall require the prior consent of both the Commission and Tenant. Without limiting the foregoing, neither Party may use the logos, trademarks, trade names, emblems, insignia, slogans, or commercial symbols (collectively "Marks") of the other Party without the other Party's prior written consent. For purposes herein, the City's Marks shall include the Seal of the City and the names "The Fine Arts Museums of San Francisco", and Tenant's marks shall include the names "The Fine Arts Museums Foundation". Upon the Expiration Date or any earlier termination of this Lease, Tenant shall have no further rights to any use of the City Marks that may have been approved during the Term of this Lease and City shall have no right to any use of Tenant's Marks that may have been approved during the Term of this Lease.

8.5 Covenant to Protect Park Facilities. At all times during the Term of this Lease, Tenant shall perform its management and operation obligations in a manner that does not cause any damage to the Park Facilities. If Tenant or any of its Agents materially damages, injures or disturbs, or if Tenant has actual knowledge of any of Tenant's Invitees materially damaging, injuring or disturbing, any of the Park Facilities, or any portion of the Park Facilities, Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all reasonable actions it reasonably deems proper to repair such Park Facilities damaged, injured or disturbed by Tenant or its Agents at Tenant's sole expense.

8.6 Trespassing. As far as reasonably possible given the Parties' respective obligations hereunder by the exercise at all times of reasonable diligence and care, Tenant shall protect the Premises from trespass during operating hours.

9. OPERATION AND CONDITION OF PREMISES

9.1 Tenant's Operation, Maintenance and Repair Obligations.

(a) Management Plan. On an annual basis, the Tenant shall prepare a management plan (the "Management Plan") for the approval of the Commission. The Management Plan shall address the responsibilities and obligations of the Parties with respect to the operation, use and management of the Museum, including without limitation, the obligations and standards of performance for the following: (i) security services for the Premises, including the art collection displayed and stored therein, (ii) janitorial services, (iii) maintenance of the Premises, including capital expenditures, engineering and custodial staff, (iv) collections of admissions revenues, (v) utilities, (vi) groundskeeping services, (vii) funding of various professional and staff positions, (viii) retail services and activities, (ix) food and beverage services, (x) special exhibitions, events, lectures, cultural and educational programs, (xi) fundraising events, (xii) permits to use portions of the Premises for private events or functions on a short-term basis, (xiii) curatorial and art conservation services, (xiv) raising contributions and developing membership for the support of the Museum, (viii) generating and collecting fee income from reproduction rights to images in the Museum's art collection, (ix) collecting special exhibition admission surcharges, (x) occupancy of limited space for retail, office and maintenance functions related to the use and operation of the Museum, and (xi) such other revenue-generating activities as may be approved by the Commission (collectively, the "Annual Management Responsibilities").

At least sixty (60) days prior to the Commencement Date of the Term, Tenant covenants to submit to the Commission for approval, a proposed Management Plan for the initial period from the Commencement Date of the Lease to and including the 30th day of June, and annually thereafter a proposed Management Plan for each succeeding fiscal year or portion thereof during the Term of this Lease. The Management Plan shall set forth in reasonable detail the contemplated responsibilities and obligations of Tenant with respect to the Annual Management Responsibilities. The Director shall review the proposed Management Plan and make such changes or recommendations with respect thereto as it may deem advisable and deliver a copy thereof to the Tenant. Each such Management Plan shall be changed to conform to any such changes or recommendations, if any, of the Director. Thereafter, upon approval by the Commission, the initial Management Plan, and each annual Management Plan thereafter, shall be the operative Management Plan for the corresponding fiscal year.

(b) Operating Standards. Subject to the terms and conditions of any applicable Management Plan, each Party hereto shall perform its respective obligations thereunder with respect to the Premises, in a first-class manner and, in connection therewith, shall provide the public with good quality products and efficient and courteous service.

(c) No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense because of City's failure to keep the Premises (including, without limitation, streets and other infrastructure within the Premises) or any adjoining property or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from rent.

10. FISCAL DUTIES AND MATTERS

10.1 General Admission Revenues.

(a) San Francisco Museums Admission Special Revenue Fund. All general admission fees, as more particularly described in Section 10.100-307 of the Administrative Code, which are collected or received by the Tenant ("General Admission Revenues") shall be deposited in the Museums Admission Special Revenue Fund ("Special Revenue Fund") pursuant to Section 10.100-307 of the Administrative Code. Any excess proceeds ("Excess General Admission Revenues") from the Special Revenue Fund shall be disbursed in accordance with Section 10.100-307 of the Administrative Code and any other applicable Law, as such may be amended from time to time.

(b) Non-General Admission Revenues. All Non-General Admission Revenues generated from Tenant's activities under this Lease shall, subject to Section 10.2, below, be the property of Tenant.

10.2 Excess General Admission Revenues and Non-General Admission Revenues. In the event any Excess General Admission Revenues are distributed to the Tenant from time to time under applicable Law, and to the extent Tenant receives any Non-General Admission Revenues, the Tenant covenants that all such Excess General Admission Revenues and any Non-General Admission Revenues shall be used only to either (i) pay debt service and other costs associated with the Bonds, or (ii) support the Commission and its programs and purposes (including without limitation programs and purposes related to the Legion of Honor), and for no other purpose whatsoever. Notwithstanding anything to the contrary contained herein, this Lease shall not create a debt of the Commission or the City, and nothing contained herein shall make or cause the Commission or the City to be liable for payment of debt service on the Bonds, and the Tenant covenants that a statement to such effect shall be printed on the Bonds.

10.3 Patron Audit Program. Tenant shall participate in City's Patron Audit Program whereby signs provided by the City will be clearly posted at each point of sale stating that receipts are to be offered for each purchase and that if a receipt is not offered, the patron shall be allowed some form of compensation as mutually agreed upon by City and Tenant.

10.4 Books and Records. Tenant shall keep accurate books and records according to generally accepted accounting principles consistently applied. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules, relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises, including the reports described in Section 10.4 above. If Tenant operates all or any portion of the Premises through a subtenant or Agent, Tenant shall require such subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

10.5 Inspection and Audit. City, or any City auditor or any auditor or representative designated by City, shall be entitled from time to time during the Term upon thirty (30) days' written notice and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's Books and Records. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's General Admission Revenues and Non-General Admission Revenues and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's Agents in making the examination. City shall also be entitled at City's option and expense, once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit to be performed by a certified public accountant designated by City. Any audit shall be conducted during usual business hours at the Premises.

10.6 Survival of Obligations. Without limiting any other provisions of this Lease, the Parties' obligations contained in this Section 10 [Fiscal Duties and Matters], including, without limitation, Tenant's payment and reporting obligations, shall survive the Expiration Date or any earlier termination of this Lease.

11. SUBSEQUENT CONSTRUCTION

11.1 City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Pursuant to the Commission's authority under Sections 5.100, 5.101 and 5.105 of the Charter, any Subsequent Construction, other than Minor Alterations (as defined below in Section 11.2), shall require the Commission's prior written approval, which approval shall not be unreasonably withheld or delayed, except that the Commission may approve or deny in its sole discretion any Subsequent Construction which results in any of the following:

(i) Construction of additional buildings or other additional structures, other than to replace or Restore those previously existing;

(ii) An increase in the bulk or height of any Improvements beyond the bulk or height approved for the Improvements;

(iii) Material alteration of the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Material increase in the floor load of the Improvements on the Premises;

(v) A material decrease in the building area of the Museum or any other area of the Premises that adversely affects the revenues generated;

(vi) A material increase in the structures built upon the Premises; and

(vii) Performance of Subsequent Construction involving material or non-cosmetic replacement or reconstruction that involves design, colors, or materials not originally approved by City in accordance with the construction of the Project, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability and appearance to the materials originally installed, as determined by City.

(b) Notice of Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires the Commission's approval, Tenant shall notify the

Director of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction. Within thirty (30) days after receipt of such notice from Tenant, the Director shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires the Commission's approval.

(c) Permits. Tenant acknowledges that the provisions of this Section are subject to Sections 14.1(a) and 11.6(a)(ii). In particular, Tenant acknowledges that the Commission's approval of Subsequent Construction (or the fact that Tenant is not required to obtain the Commission's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the City itself in its regulatory capacity.

11.2 Minor Alterations. Unless otherwise required under Section 11.1(a)(i)-(vii), the Commission's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements which do not materially affect the structural integrity or design of the Improvements (b) recarpeting, repainting the interior of any building on the Premises, groundskeeping, or similar alterations, or (c) any other Subsequent Construction which does not require a building permit (collectively, "Minor Alterations").

11.3 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires the Commission's approval under this Section 11, Tenant shall prepare and submit to the Commission, for review and written approval hereunder, reasonably detailed schematic drawings (as amended or modified, the "Schematic Drawings"), and following the Commission's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "Construction Documents"). The Commission may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. The Commission shall approve or disapprove Construction Documents submitted to it for approval within sixty (60) days after submission. Any disapproval shall state in writing the reasons for disapproval. If the Commission deems the Construction Documents incomplete, the Commission shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If the Commission notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If the Commission disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 11.4 [City Approval of Construction Documents], the Commission shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in the Commission's previous notice of rejection, and the Commission shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If the Commission fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 11.3, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved, provided that Tenant first provides the Commission with at least twenty (20) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, the Commission and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. The Commission and Tenant shall communicate and consult informally as frequently as necessary to ensure that the formal submittal of any Construction Documents to the Commission can receive prompt and speedy consideration.

11.4 City Approval of Construction Documents. Upon receipt by Tenant of a disapproval of Construction Documents from the Commission, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses the Commission's written objections and the Commission shall approve or disapprove such revised portions in the same manner as provided in Section 11.3 [Construction Documents in Connection with Subsequent Construction] for approval of Construction Documents (and any proposed changes there) initially submitted to the Commission. If Tenant desires to make any substantial change in the Final Construction Documents after the Commission has approved them, then Tenant shall submit the proposed change to the Commission for its reasonable approval. The Commission shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to the Commission. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

11.5 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence.

(b) Reports and Information. During periods of construction, Tenant shall submit to the Commission written progress reports when and as reasonably requested by the Commission, but not more frequently than once every three (3) months, except that during the last three (3) months during any period of such construction, the Commission may request that such reports be submitted monthly.

11.6 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by the Commission:

(i) The Commission shall have approved all final construction documents (or those aspects of the final construction documents as to which the Commission has an approval right under Section 11.1 [City's Right to Approve Subsequent Construction]);

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Section 14 [Compliance with Laws];

(iii) Tenant shall have submitted to the Commission in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to the Commission of Tenant's ability to pay such costs as and when due.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-acceptable methods. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Neither City nor the Commission shall have any responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in the construction of any Improvements to the Premises shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest general prevailing rate of wages for the labor so performed. Tenant further agrees that, as to the construction of such improvements under this Lease, Tenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Tenant shall require any contractor to provide, and shall deliver to the Director every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements.

(f) Coordination with Commission. During the Term of this Lease, Tenant shall coordinate, and shall cause its Agents to coordinate, all activities related to any construction or Subsequent Construction at the Premises with the Commission in connection with the Commission's operations and shall cause such construction or Subsequent Construction to not materially interfere with the use and operations of the Commission at or in the Premises.

11.7 Safety Matters. Tenant while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

11.8 As-Built Plans and Specifications. With respect to any Subsequent Construction for which the Commission's approval was required under this Section 11, Tenant shall furnish to the Commission one set of as-built plans and specifications with respect to such Subsequent Construction within ninety (90) days following completion. If Tenant fails to provide such as-built plans and specifications to the Commission within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from the Director, the Commission will thereafter have the right to cause an architect or surveyor selected by the Commission to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to the Commission promptly upon the Director's request. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

12. UTILITIES

12.1 Utilities. Utilities and services furnished to or used by the Parties in connection with the operation of the Premises, including without limitation, gas, electricity, water, telephone service, janitorial service and trash collection, and connection charges, shall be provided and paid for by the Parties in accordance with any approved annual Management Plan, as described in Section 9, above. The Parties agree that any and all utility Improvements proposed by Tenant shall be subject to the provisions of Section 11.1 [City's Right to Approve Subsequent Construction] and that all utility improvements (whether now existing or hereafter installed) shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant, regardless of how or when they were acquired or installed. City shall not be liable for any failure or interruption of any utility service furnished to the Premises. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease.

12.2 Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities may be installed on the Premises without the prior written approval of the Commission, which approval may be withheld in Commission's sole and absolute discretion. Any wireless telecommunications system shall be subject to the Commission's approval pursuant to the City's adopted policy on the siting and requirements for wireless telecommunications systems. In any event, no such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, telecommunications or transmission equipment reasonably required for City's or City's operations, including, without limitation, facilities for City emergency or 800 MHz City wide radio system communications facilities (or its successor), at a location on top of the Improvements reasonably acceptable to Tenant.

13. LIENS

13.1 Liens. Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases and Permitted Title Exceptions existing as of the Effective Date and not caused or suffered to arise by Tenant or Tenant's use and occupancy of the Premises, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of subtenants), except only for Impositions being contested as permitted by Section 6, and (iii) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 6. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

13.2 Mechanics' Liens. Tenants shall keep the Premises, Tenant's leasehold estate and all of City's property (real and/or personal) free (including, without limitation, the Park Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not cause a lien to be released of record by payment or posting of a proper bond within thirty (30) days following the imposition of any such lien, City shall have, in addition to all other remedies provided herein and by Law or equity, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable Attorneys' Fees and Costs) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to the Commission, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of such contest.

14. COMPLIANCE WITH LAWS

14.1 Compliance with Laws.

(a) Tenant's Obligation to Comply. Tenant shall perform its obligations under any annual Management Plan and conduct its use and operation of the Premises in strict compliance at all times with all present or future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, including, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq., and Title 24 of the California Code of Regulations, all Laws relating to seismic repair, reinforcement or retrofitting, and all Environmental Laws, including, without limitation, all Laws with respect to asbestos and underground or above-ground storage tanks containing Hazardous Materials.

14.2 Regulatory Approvals.

(a) Responsible Party. Tenant understands and agrees that Tenant's use and operation of the Premises under any annual Management Plan may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall not seek any Regulatory Approval without first obtaining the written consent of the Director.

(b) City Acting as Owner of Real Property. Tenant further understands and agrees that City, acting by and through the Commission is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

14.3 Compliance with Insurance. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk. Tenant shall faithfully observe, at its expense, any and all requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

15. FINANCING; ENCUMBRANCES; SUBORDINATION

15.1 No Encumbrances by Tenant. Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the Park Facilities, City's fee estate in the Premises or any adjoining property, City's interest under this Lease, Tenant's leasehold interest under this Lease, or any portion thereof.

(a) Restrictions on Financing. Without limiting the foregoing, Tenant shall not:

(i) engage in any financing or other transactions creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease without obtaining the prior written consent of the City's Board of Supervisors, in its sole and absolute discretion; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances without obtaining the City's prior written consent, in its sole and absolute discretion.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises or any other real property of City in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in Premises, nor its right to receive rent, to any Encumbrancer of Tenant.

(c) No Amendment. Under no circumstance shall City have any obligation to amend this Lease in connection with (i) Tenant's issuance of the Bonds or any refunding thereof, or (ii) any other indebtedness of Tenant now or hereafter arising.

(d) Violation of Covenant. Any Encumbrance by Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

16. DAMAGE OR DESTRUCTION

16.1 General. If at any time during the Term any Damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, the rights and obligations of the Parties shall be governed by Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated, and any other applicable Law.

16.2 Destruction Due to Risk Covered by Insurance. If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall apply the proceeds of such insurance as instructed in writing by the Commission. Such destruction, in and of itself, shall not terminate this Lease.

16.3 Destruction Due to Risk Not Covered by Insurance. If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk not required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall, to the extent feasible, continue to operate the Premises in substantially the same manner as they were being operated immediately before destruction; provided, however, in the event of Major Damage (as defined below) either party may elect to terminate this Lease by providing to the other party written notice thereof within sixty (60) days of the date of such Major Damage. As used herein, the term

"Major Damage" means Damage to or destruction of greater than twenty-five percent (25%) of the usable square footage of the Premises or Improvements.

17. ASSIGNMENT AND SUBLETTING

17.1 Restriction on Assignment and Subletting. Tenants, its successors and any permitted assigns shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet or license any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), or cause or permit any other Transfer, including a Significant Change, without (a) the prior written consent of the Director in each instance, which the Director may withhold in his or her sole and absolute discretion, and (b) the prior written consent of the Commission in the case of a proposed Assignment, Sublease or Transfer of the Tenant's entire interest under this Lease. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant. City has entered into this Lease with Tenant in reliance on Tenant's identity and the special skills of Tenant in its ability to conduct the Uses and perform the obligations hereunder, and the foregoing prohibition on Assignment and Subletting is expressly agreed to by Tenant as an inducement to City to enter into this Lease.

17.2 Notice of Proposed Transfer. If Tenant desires to enter into a Transfer, then it shall give written notice (a "Notice of Proposed Transfer") to the Director of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Transfer, including a draft copy of the proposed Assignment of Sublease agreement or, in the event of a Significant Change, documentation related to such Significant Change. Tenant shall provide the Director with all documentation then available related to the proposed Transfer (with copies of final executed documentation to be supplied on or before the effective date thereof), sufficient information to permit the Director to determine the identity and character of the proposed Transferee, financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the Director may reasonably request.

17.3 Conditions. Any Transfer is further subject to the satisfaction of the following conditions precedent:

(a) Assumption of Tenant's Obligations. Any proposed Transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant under this Lease (including, without limitation, the covenants contained in Section 9.1 [Tenant's Operation, Maintenance and Repair Obligations] hereof) and any other agreements or documents entered into by and between City and Tenant relating to the Project, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject;

(b) Acceptable Transferee. The proposed Transferee has demonstrated to Director's reasonable satisfaction (i) that it will use the Premises in the same manner as Tenant under this Lease and has or will obtain all permits, licenses and approvals necessary to operate the Premises lawfully; (ii) that it will not materially adversely affect implementation of Project in accordance with the terms of this Lease; (iii) that it has at least substantially the same amount of experience and qualifications related to implementation of the Project; and (iv) that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned; and

(c) Approval of Transfer Documents. The Director shall have approved, in his or her sole discretion, the form and content of all instruments and other legal documents involved in effecting the Transfer (the "Transfer Documents"), and executed copies of all such Transfer Documents shall have been delivered to the Director.

17.4 Effect of Transfer. No Transfer by Tenant nor any consent by the Director, the City or the Commission shall relieve Tenant, of any obligation to be performed by Tenant under this Lease. Any Transfer that is not in compliance with this Article shall be void and, at the Commission's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any rent or other payments by or on behalf of City from a proposed Transferee shall not constitute consent to such Transfer by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

17.5 Indemnity for Relocation Benefits. Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

18. DEFAULT; REMEDIES

18.1 Events of Default . Any of the following shall constitute an event of default ("Event of Default") hereunder:

(a) Tenant Defaults.

(i) Any failure by Tenant to perform or comply with any covenant, condition or representation made under this Lease, including any failure to perform in accordance with any annual Management Plan, provided Tenant shall have a period of forty-five (45) days from the date of written notice of such failure from City within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion;

(ii) Tenant permits or suffers a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease, provided Tenant shall have a period of thirty (30) days from the date of written notice from City within which to cure any default hereunder; or

(iii) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within ninety (90) days.

(iv) The exercise by the Trustee of any of its remedies under the Indenture or any other documents evidencing or securing the Bonds issued by the Tenant shall constitute an Event of Default under this Lease, provided Tenant shall have such period(s) of time as may be provided in the Bond Documents within which to cure such default under the Bond Documents and this Lease.

(v) Any failure to maintain any insurance required to be maintained by Tenant under this Lease.

(vi) Tenant engaging in or allowing any use not permitted hereunder or engaging in any activity prohibited by Section 8.3 or any other provision in this Lease, and such activity continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or if such cure cannot reasonably be completed within such fifteen (15) day period, if Tenant does not commence such cure within such fifteen (15) day period, or having so commenced, does not prosecute such cure with diligence and dispatch to completion.

(b) City Defaults.

(i) Any failure by City to perform or comply with any covenant, condition or representation made under this Lease, provided City shall have a period of forty-five (45) days from the date of written notice of such failure from Tenant within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, City shall have a reasonable period to complete such cure if City promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion.

18.2 Remedies. Upon the occurrence and during the continuance of an Event of Default beyond any applicable cure period, the non-defaulting party shall have the following rights and remedies:

(a) City Remedies.

(i) The right to terminate this Lease, upon written notice provided to Tenant, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting General Admission Revenues or Non-General Admission Revenues, and other amounts due or payable by Tenant under this Lease to the date of such termination.

(ii) In addition to the other remedies provided in this Lease, City shall be entitled at any time after an Event of Default or threatened Default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. In addition, after the occurrence of any Event of Default, City shall be entitled to collect damages or to seek any other equitable relief which may be appropriate to the circumstances of such Event of Default where such relief does not impose personal liability on Tenant or its Agents.

(b) Tenant Remedies.

(i) The right to terminate this Lease, upon written notice provided to City, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting General Admission Revenues or Non-General Admission Revenues, and other amounts payable by Tenant under this Lease to the date of such termination.

(ii) In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after an Event of Default by City to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. In addition, after the occurrence of any Event of Default by City, Tenant shall be entitled to any other equitable relief where appropriate and where such relief does not impose personal liability on

City or its Agents; provided, however, (1) in no event shall Tenant be entitled to recover or obtain from City or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages directly or proximately arising out of a default by City hereunder) or Losses other than Tenant's actual damages incurred as a result of a City Default, (2) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a Default by City hereunder, and (3) Tenant shall have no remedy of self-help.

18.3 City's Right to Cure Tenant's Defaults. If an Event of Default by Tenant occurs, then City, in the discretion of the Director, may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable Attorneys' Fees and Costs, in remedying or attempting to remedy such Event of Default. Tenant's obligations to repay sums paid by City under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

19. WAIVER OF CLAIMS

19.1 Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant or any of its Agents for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, indirect, special, incidental and consequential damages, (including, without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever, including, without limitation, all claims arising from the joint or concurrent negligence of City or its Agents. Notwithstanding the foregoing, nothing herein shall relieve City from Losses caused directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of City for any consequential, incidental or punitive damages including, but not limited to, lost profits and arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, City, the Commission, their respective departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City of its Agents.

(b) In connection with the foregoing releases set forth in this Section 19.1, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant's Initials: _____

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

20. INSURANCE

20.1 Tenant's Insurance. Tenant shall maintain or cause to be maintained throughout the Term of this Lease, insurance in the following amounts and coverages:

(a) Property insurance, on an all-risk form, including earthquake (subject to the provisions of Section 20.2(d)) and flood (subject to the provisions of Section 20.2(e)), for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars ($10,000) each occurrence (except as to earthquake and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 20.1(a) and the insurance required under Section 20.1(g) may be required in order to comply with the requirements of Section 20.2(d) and Section 20.2(e). Such insurance shall include Tenant and City as named insureds as their respective interests may appear. With respect to the City's interests, such insurance shall include rental interruption coverage in an amount equal to _________________________. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Tenant and reasonably acceptable to City; provided, however, that City's Risk Manager shall have the right, at any time, to ascertain the full insurable value at its own expense.

(b) Boiler and Machinery insurance, comprehensive form, covering damage to or loss or destruction of pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery, equipment and property, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars ($10,000) each accident.

(c) Comprehensive or commercial general liability insurance with limits not less than Five Million Dollars ($5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Broadform Property Damage, Explosion, Collapse and Underground (XCU), Independent Contractors, Personal Injury, Products and Completed Operations occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto.

(d) At all times during any period of Subsequent Construction, Comprehensive Builder's Risk insurance, on an all-risk form, including earthquake (subject to the provisions of Section 20.2(d)) and flood (subject to the provisions of Section 20.2(e)), for one hundred percent (100%) of the completed value of any Improvements, Alterations or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars ($10,000) each occurrence (except as to earthquake and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 20.1(d) and the insurance required under Section 20.1(g) may be required in order to comply with the requirements of Section 20.2(d) and Section 20.2(e). Tenant may require its contractor or consultant to maintain the coverage required hereunder.

(e) Workers' compensation insurance in statutory amounts with Employer's Liability coverage limits of not less than One Million Dollars ($1,000,000) each accident.

(f) Comprehensive or Business Automobile Liability Insurance with limits not less than One Million Dollars ($1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(g) Business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 20.1(a),(b) and (d) covering a period of not less than one (1) year following Completion, with an annual limit of not less than three (3) Million Dollars ($3,000,000) per year.

(h) Environmental pollution or contamination liability insurance, during the course of any Hazardous Materials Remediation activities taking place prior to Completion of the Project, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence combined single liability for Bodily Injury and Property Damage or, with the prior written approval of the Commission (such approval not to be unreasonably withheld, conditioned or delayed). Tenant may require its contractor or consultant to maintain the coverage required hereunder.

(i) Professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, with any deductible not to exceed Ten Thousand Dollars ($10,000) each claim. Tenant may require its contractor or consultant to maintain the coverage required hereunder

(j) Such other risks in such amounts as City's Risk Manager may reasonably require.

[CONFIRM WITH CITY'S AND TENANT'S RISK MANAGERS]

~~1.2~~**20.2General Requirements.** All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by the Commission.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term of this Lease and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

(i) Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as Additional Insureds, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(d) As to earthquake insurance only:

(i) from and after Completion of the Project, such insurance shall be in an amount at least equal to the lesser of (1) the amount available at commercially reasonable rates from recognized insurance carriers, or (2) one hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale, as determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to City, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate;

(ii) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the Improvements.

(e) As to flood insurance only:

(i) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates.

(ii) rates for all food insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one tenth of one percent (.1%) of the then-current replacement cost of the Improvements.

(f) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the addresses(es) for City set forth in the Basic Lease Information.

20.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance and copies of additional insured policy endorsements in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, the Commission may, at its option, procure the same for the account of Tenant, and the costs thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

20.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at the Commission's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant conform to such general commercial practice.

20.5 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, this Lease shall terminate immediately, at the Commission's election, made in his or her sole and absolute discretion by delivery of written notice to Tenant, upon the lapse of any required insurance coverage, unless Tenant reinstates the required insurance coverage within ten (10) days after the Commission's notice to Tenant and no event shall have occurred which gives rise to any claim related to this Lease.

20.6 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

20.7 City's Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise, except for fine arts insurance to be maintained by the City during the Term of the Lease for the permanent art collection and objects on loan to the Museum.

20.8 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the faulty or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20.9 Contractors' Insurance. Tenant shall provide evidence acceptable to the Commission that any contractor engaged by Tenant to perform work on the Premises maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the Commission, including, but not limited to, Workers' Compensation Insurance (including Employers' Liability Insurance) and insurance against liability for injury to persons and property arising out of all such contractor's operations, and the use of owned, non-owned or hired automotive equipment in all such operations, and all such policies shall name City and its Agents as additional insureds.

21. ACCESS BY CITY

21.1 Access to Premises by City.

(a) Access to Perform City's Obligations and Exercise City's Rights Hereunder. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times with no notice whatsoever to perform any obligations and to exercise any rights of City under applicable Law or under this Lease.

(b) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all times for any purpose.

21.2 Park Facilities. Without limiting Section 21.1 [Access to Premises by City] above, City shall have the right at all times, to enter upon the Premises upon forty-eight (48) hours' advance written or oral notice (except in cases of emergency as determined by City, in which cases no notice shall be required), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Park Facilities, including, without limitation, any public utility facilities. City shall bear the expense of any such activities, unless and to the extent the need is caused by the acts, omissions or negligence of Tenant or its Agents. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

22. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which any rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relief upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The Commission shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

23. APPROVALS BY CITY

23.1 Approvals by City. Except as otherwise set forth in this Lease, any consent or approval required by the City or the Commission, must be given or exercised by the Director in his or her discretion. The Director or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The Director's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by the Commission or the Director of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of the Commission or the Director, the Director, or his or her designee, shall be authorized to execute such instrument on behalf of the Commission, except as otherwise expressly provided by this Lease or applicable Law, including the City's Charter.

24. RESERVED

25. SURRENDER

25.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises; provided, however, the Commission may, at its sole option, elect to permit Tenant to leave such Alterations, Improvements or Tenant's Personal Property on the Premises. In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at the Commission's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

25.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises, and any Alterations, Improvements or Tenant's Personal Property which City permits Tenant to leave on the Premises, shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances, and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises and any permitted Improvements or Alterations or Tenant's Personal Property.

25.3 Termination Without Further Notice. This Lease shall terminate without further notice on the Expiration Date.

26. HOLDOVER

26.1 Holding Over. Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. In any such event, at City's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant, such tenancy terminable by either Party upon thirty (30) days' prior written notice. Such tenancy shall be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute an Event of Default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments by Tenant hereunder, and whether or not such amounts are at a holdover rate or the rate in effect at the end of the Term of the Lease.

27. HAZARDOUS MATERIALS

27.1 Hazardous Materials Compliance.

(a) Compliance with Laws. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, provided that Tenant may store and use such substances in the Premises and any Improvements in such limited amounts as are customarily used for general office purposes (such as copy toner and supplies), art conservation laboratory treatments and purposes (so long as such substances and quantities are in each instance specifically approved in writing by the Director), maintenance purposes, and for janitorial purposes; and further provided that such storage and use permitted hereunder shall be at all times in full compliance with all applicable Environmental Laws.

(b) Notice. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Materials in, on or about the Premises or any Improvements. Each Party may from time to time request (but no more than four (4) times per year) that the other Party provide information adequate for the requesting Party to determine that any Hazardous Materials permitted hereunder is being handled in compliance with all applicable Environmental Laws, and the Party receiving such a request shall promptly provide all such information. In addition, each Party shall provide the other Party with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance with such Party with the terms and provisions of this Section 27) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications). Without limiting Section 21 [Access by City] hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Materials and compliance with the provisions hereof at all reasonable times upon at least forty-eight (48) hours' advance written notice to Tenant (except in the event of an emergency).

27.2 City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not undertake any Remediation in response to the presence, handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to the Commission for the City's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. The Commission shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If the Commission disapproves of any such Hazardous Materials Remediation plan, the Commission shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (a) in compliance with all applicable Hazardous Materials Laws, (b) to the reasonable satisfaction of the Commission, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the Regional Water Quality Control Board and the San Francisco Department of Public Health.

28. REPRESENTATIONS AND WARRANTIES

28.1 Representations and Warranties of Tenant. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a nonprofit public benefit corporation duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

(b) Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and any other agreements contemplated by this Lease.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Neither Tenant nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Tenant of this Lease or any of the terms and covenants contained in this Lease. There are no pending or threatened, to Tenant's knowledge, suits or proceedings or undischarged judgments affecting Tenant or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant or any of its members.

(d) Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (1) any agreement, document or instrument to which Tenant or any member is a party or by which Tenant's or any member's assets may be bound or affected, (2) to Tenant's knowledge, any Law, statute, ordinance, regulation, or (3) the articles of incorporation or the bylaws of the Tenant, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or its members other than contemplated by this Lease.

(f) Meeting Financial Obligations. Tenant is generally meeting its current liabilities as they mature. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

29. SPECIAL PROVISIONS

29.1 Charter Provisions. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco. Nothing contained in this Lease shall be construed to amend, alter or modify any obligations of the Parties under the Charter or applicable law. In the event of any conflict between the terms of this Lease and the Charter, the terms of the Charter shall govern. The Lease shall not provide to the Tenant a contractual right or remedy to enforce the City's obligations under the Charter.

29.2 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(B) of the San Francisco Administrative Code.

(d) Condition to Lease. Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including, but not limited, to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

29.3 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to more toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

29.4 Tropical Hardwood/Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Except as permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood wood product in the construction of the Project or any other Improvements on the Premises.

29.5 Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

29.6 Waiver of Relocation Assistance Rights. If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 26 [Hold Over], Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260, et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601, et seq., or under any similar law, statute or ordinance now or hereafter in effect, relating to condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

29.7 Employee Signature Authorization Ordinance. City has adopted an Employee Signature Authorization Ordinance (San Francisco Administrative Code Sections 23.31-23.35). That ordinance requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant acknowledges and agrees that Tenant and Tenant's subtenants will comply with the requirements of such Ordinance to the extent applicable to Tenant's operations on the Premises.

29.8 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful and knowing failure by Tenant to make such disclosure, if any, shall constitute grounds for the City's termination and cancellation of this Lease.

29.9 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Administrative Code Sections 82.1 to 82.8 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

29.10 Pesticide Prohibition. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Commission an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance and, (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the Commission, from seeking a determination from the Board on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

~~1.11~~29.11 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit and such information must be disclosed under the Administrative Code. Information provided which is covered by this Section will be made available to the public upon request.

29.12 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

29.13 City's Obligations Subject to Controller's Certification of Funds. The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained herein, there shall be no obligation for expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

29.14 Incorporation. Each and every provision of the San Francisco Administrative Code described or referenced in this Lease is hereby incorporated by reference as though fully set forth herein. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Section 18 [Default; Remedies] of this Lease, unless (i) such failure is otherwise specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section.

29.15 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us\HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Appraiser shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within 30 days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Contract regarding services to be performed on the Premises entered into by Tenant shall require the Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Contract or Subcontract and shall certify to the Purchasing Department that it has notified the Contractor or Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor or Subcontractor through written agreement with such Contractor or Subcontractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Contractor and Subcontractor performing services on the Premises. If any Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

29.16 Mitigation Measures. To the extent related to the ongoing use and operation of the Premises, the Premises shall be operated in accordance with the Mitigation Measures attached to this Lease as Exhibit B.

29.17 Taxpayer Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et seq., and San Francisco Ethics Commission Regulations 3.710(a)-1 - 3.730-1, prohibit the public officials who approved this contract from receiving (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of $50; (2) any employment for compensation; (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Tenant understands that any public official who approved this Lease may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this Lease. Upon request, Tenant agrees to furnish, before this Lease is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this Lease is entered into, Tenant with a list of public officials who, under the Conduct Code, approved this Lease. Failure of any public official who approved this Lease to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this Lease. Notwithstanding anything to the contrary in this Lease, neither party shall have the right to terminate this Lease due to any failure by the other party to provide the information described in this paragraph.

30. GENERAL PROVISIONS

30.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises and (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by facsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

30.2 No Implied Waiver. No failure by either Party hereto to insist upon the strict performance of any obligation of the other Party under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no delivery or acceptance of any amounts due under this Lease during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of the applicable Party's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either Party given in any instance under the terms of this Lease shall not relieve the other Party of any obligation to secure any other consent of the applicable Party in any other or future instance under the terms of this Lease.

30.3 No Accord or Satisfaction. No submission by Tenant or acceptance by City of any sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any rent or other amounts under this Lease, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as any charge hereunder shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

30.4 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Party waiving any right.

30.5 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date, which falls on a Saturday, Sunday or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited to, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of rent and any other sums due hereunder.

30.6 Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

30.7 Interpretation of Lease.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

30.8 Successors and Assigns. Subject to the provisions of Section 17 [Assignment and Subletting] hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their successors and assigns.

30.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

30.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

30.11 Governing Law; Selection of Forum. This Lease shall be construed and enforced in accordance with the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

30.12 Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understanding and agreements regarding this Lease. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

30.13 Attorney's Fees and Costs. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable Attorneys' Fees and Costs.

30.14 Recordation. This Lease will not be recorded by either Party.

30.15 Extensions by City. Upon the request of Tenant, City in its reasonable discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including, but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

30.16 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

30.17 Further Assurances. The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

30.18 Transition Procedures. Without limiting Section 25 [Surrender] above, upon the expiration of the Term or earlier termination of this Lease, for whatever reason, Tenant and City shall do the following (and the provisions of this Section 30.18 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management of the Premises:

(a) Transfer of Licenses. Upon the expiration or earlier termination of the Lease, Tenant shall use its best efforts (i) to transfer to City or City's nominee all licenses, operating permits and other governmental authorizations and all contracts which City elects to assume, including contracts with governmental or quasi-governmental entities and management contracts, that may be necessary for the operation of the Premises and completion of any repairs, maintenance, Improvements or Alterations (collectively, "Licenses"), or (ii) if such transfer is prohibited by law or City otherwise elects, to cooperate with City or City's nominee in connection with the processing by City or City's nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by City or City's nominee.

(b) Leases and Concessions. Tenant shall assign to City or City's nominee simultaneously with the termination of this Lease, and the assignee shall assume, all leases, subleases, and concessions agreements in effect with respect to the Premises then in Tenant's possession which City or City's nominee elects to assume.

(c) Books and Records. All books and records for the Premises kept by Tenant shall be delivered promptly to City or City's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Tenant at all reasonable times for inspection, audit, examination, and transcription for a period of one year and Tenant may retain (on a confidential basis) copies or computer records thereof.

30.19 Survival of Indemnities. Termination of this Lease shall not effect the right of either party to enforce any and all indemnities given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

30.20 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

30.21 Reserved .

30.22 Non-Liability of Officials, Employees and Agents of City or Any Other Indemnified Parties. No elective or appointive board, commission, member, director, officer, employee or other Agent of City or any other Indemnified Parties shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease, and Tenant agrees that it will have no recourse with respect to any obligation or Default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

30.23 Non-Liability of Tenant's Members, Officers, Directors, Shareholders, Agents and Employees. No member, officer, director, shareholder, Agent or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

30.24 No Third Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

30.25 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL RESOLUTIONS OF THE COMMISSION AND CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THIS LEASE SHALL BE NULL AND VOID UNLESS THE COMMISSION, CITY'S MAYOR AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and Tenant have executed this Lease in triplicate as of the date first written above.

TENANT:

FINE ARTS MUSEUMS FOUNDATION,
a California non-profit public benefit
corporation

By: ______________________________
Its: ______________________________

By: ______________________________
Its: ______________________________

Date:____________________

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

____
Mayor

____
Clerk of Board of Supervisors

Date:____________________

APPROVED BY
BOARD OF TRUSTEES OF THE
FINE ARTS MUSEUM OF
SAN FRANCISCO
PURSUANT TO RESOLUTION NO. ______
ADOPTED ____________________________

____
Secretary

RECOMMENDED:

____
Director
Board of Trustees of the Fine Arts Museums
of San Francisco

APPROVED AS TO FORM;

DENNIS J. HERRERA, City Attorney

By: ________________________________
Deputy City Attorney

APPENDIX A

DEFINITIONS

1. **"Administrative Code"** means the San Francisco Administrative Code, as amended or modified.
2. **"Affiliate of Tenant"** means any person or entity which directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under the common Control with, Tenant.
3. **"Agents"** means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.
4. **"Alterations"** means any alterations, installations or additions to any Improvements or to the Premises.
5. **"Assignment"** has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
6. **"Attorneys' Fees and Costs"** means reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.
7. **"Basic Lease Information"** means the information with respect to this Lease summarized in Article I hereof.
8. **"Bonds"** means one or more series of bonds or other instruments of indebtedness issued on behalf of the Tenant and COFAM for the purpose of financing or refinancing the Project.
9. **"Bond Documents"** means the Indenture, the Bonds, the Loan Agreement and any and all documents evidencing, securing or relating to the issuance or refunding of the Bonds.
10. **"Charter"** means the 1996 Charter of the City and County of San Francisco, as amended or modified.
11. **"City"** means the City and County of San Francisco, a municipal corporation.
12. **"City's Personal Property"** means the personal property of City, including all works of art, fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible and intangible personal property or assets, whether now or hereafter located in, upon or about the Premises, belonging to City and/or in which City has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor. City's Personal Property specifically shall include the works of art, furniture, personal property, furniture, equipment, machinery, supplies, and other tangible and intangible assets owned by the City and controlled by the Commission. Upon transfer of the Project to the City, the Improvements shall also become the City's property.
13. **"City's Sign Guidelines"** means any and all policies or rules of the City now or hereafter in effect governing the placement of signs, advertisements, awnings, canopies, banners or other

exterior decoration, including as provided under the City's Park Code, a copy of which has been provided to Tenant.

14. **"Commencement Date"** means the date on which the Term of this Lease commences as described in Section 4.2 [Commencement Date and Expiration Date] hereof.
15. **"Commission"** means the Board of Trustees of the Fine Arts Museum of San Francisco organized and existing under Article V of the San Francisco Charter.
16. **"Completion"** means completion of the Project, as evidenced by the issuance of a temporary certificate of occupancy or certificate of occupancy for the Premises by the City's Department of Building Inspection.
17. **"Control", "Controlled", "Controlling" and "Controls"** mean the ownership of greater than fifty percent (50%) of the voting interests of a partnership or limited liability company, or alternatively, ownership of greater than fifty percent (50%) or more of the voting stock of a corporation or of the membership interests in a limited liability company.
18. **"Damage"** means as set forth in Section 16.1(b).
19. **"Director"** means the Director of the Museum appointed by the Commission pursuant to Charter Section 5.102.
20. **"Effective Date"** means the date on which this Agreement becomes effective pursuant to Section 4.3 [Effective Date] hereof.
21. **"Encumber"** means create any Encumbrance.
22. **"Encumbrance"** means any mortgage, deed of trust, leasehold deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument, or other lien, mortgage or encumbrance.
23. **"Encumbrancer"** means a mortgagee, beneficiary of a deed of trust or leasehold deed of trust, or other holder of an Encumbrance.
24. **"Environmental Laws"** means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions, in or, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.
25. **"Event of Default"** means any one of the events of default described in Section 18 [Default; Remedies] hereof following the expiration of any applicable cure periods.
26. **"General Admission Revenues"** means all general admission fees which are collected or received by the Tenant, as more particularly described in Section 10.1(a) below.
27. **"Hazardous Material"** means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste: listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.
28. **"Hazardous Material Claims"** means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened in writing by any third party against City or its Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury

resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common Law, Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, damages to any natural resource (as that term is defined in CERCLA) owned by City, and reasonable Attorneys' Fees and Costs and consultants' fees and experts' fees and costs.

29. **"Holidays"** means any date on which either City or Tenant are authorized or required by Law or executive order to be closed for a state or national Holiday.
30. **"Impositions"** means any and all real and personal property taxes, general and special assessments, excises, licenses, liens, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements, including, without limitation, possessory interest taxes.
31. **"Improvements"** means any and all buildings, structures, fixtures, facilities, installations, machinery and equipment, erected, built, constructed, installed or placed, in on, over or under the Premises, including, without limitation, the Project, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping, and each and every type of physical improvement to the extent located at, on or affixed to the Premises; provided, however, the Improvements shall specifically exclude any of City's Personal Property and any of Tenant's Personal Property.
32. **"Indemnify"** means indemnify, protect, defend and hold harmless.
33. **"Indemnified Parties"** means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Commission, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.
34. **"Indenture"** means the Indenture dated as of **[March 1, 2002]** providing for the issuance of the Bonds, as originally executed and as may be supplemented or amended from time to time.
35. **"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.
36. **"Invitees"** when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.
37. **"Landlord"** means the City and County of San Francisco, acting through its Board of Trustees of the Fine Arts Museums of San Francisco.
38. **"Law"** means any law, statute, ordinance, resolution, rule, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, or over the Commission whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.
39. **"Lease"** means this Lease as it may be amended in accordance with its terms.
40. **"Lease Year"** is a calendar year, except that the first Lease Year shall commence on the Commencement Date and the last Lease Year shall end on the date this Lease expires or terminates.
41. **"Loan Agreement"** means the Loan Agreement dated as of **[March 1, 2002]** executed in connection with the issuance of the Bonds, as originally executed and as may be supplemented or amended from time to time.
42. **"Losses"** means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and

expenses, including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs.

43. **"Merchandise Sales"** means all sales or rentals of, cards, posters, books, apparel and equipment, magazines, newspapers and any other merchandise from any museum retail store or elsewhere on the Premises or related to the Premises, including, without limitation, sales of Museum merchandise ordered via the internet or telephone.
44. **"Mitigation Measures"** means those measures set forth on Exhibit B.
45. **"Mortgage"** means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.
46. **"Mortgagee"** means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.
47. **"Museum"** means the M. H. deYoung Memorial Museum.
48. **"Non-General Admission Revenues"** means any revenues generated or collected on the Premises, other than General Admission Revenues, including without limitation, the special admissions fees paid to the Museum, selling price of all merchandise or services sold, leased, licensed or delivered in or from the Premises or any Improvements by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not, except as specifically set forth below), including the gross amount received by reason of orders taken on the Premises or any Improvements although filled elsewhere, and whether made by store personnel or vending machines. Non-General Admission Revenues shall include, without limitation, (i) all revenues and income derived from (1) special admission fees, instructional fees received by Tenant, reservation fees, membership and other fees and dues of any kind (including nonrefundable deposits), but specifically excluding any General Admission Revenues; (2) merchandise sales (without deduction for any rent, interest or other payments made by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees or concessionaires); (3) the operation of restaurants, banquet facilities, and any other food or beverage operations or sales on the Premises, if allowed pursuant to the terms of this Lease; (4) proceeds from parking facilities, if applicable; (5) proceeds from business interruption insurance, loss of earnings insurance or other insurance of a similar kind; (6) payments from, or pass-throughs to, any subtenants or any other entity or individual for use of the Premises; (7) pay telephones, stamp machines, music machines, amusement machines, food and beverage vending machines or public toilet locks; (8) rent or other fees for the use of any of the Improvements; and (9) whatever source, which Tenant in the normal and customary course of Tenant's operations would credit or attribute to Tenant's business conducted at, upon or from Premises; and (ii) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Premises which are neither included in nor excluded from Non-General Admission Revenues by other provisions of this definition, but without any duplication.
49. **"Official Records"** means the official records of the city and county of San Francisco.
50. **"Park Facilities"** means, except for the Premises, any and all park property under the jurisdiction or control of the City adjacent to or otherwise used in connection with the Premises, including, without limitation that certain park property commonly known as the Music Concourse, any and all facilities, fixtures or improvements used by City in the operation of such other park properties, any and all public utilities and pipelines serving such other park properties, and any paved, public streets located within the Premises.
51. **"Party"** means Landlord or Tenant; "Parties" means both Landlord and Tenant.
52. **"Permitted Encumbrances"** means and includes: (1) liens and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith by the Commission; (2) the lien of taxes and assessments which are not

delinquent, or if delinquent, are being contested; (3) defects and irregularities in the title to the Premises which, whether singly or in the aggregate do not materially adversely affect the value or operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (4) easements, exceptions or reservations for the purpose of pipelines, fiber optic lines, telephone lines, telegraph lines, power lines and substations, and other utilities, roads streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which, whether singly or in the aggregate, do not materially interfere with or impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (5) statutory liens or encumbrances arising in the ordinary course of business which are not delinquent or are being contested in good faith by the Commission; (6) the lease or license of the use of a part of the Premises to art or culture-related non-profit corporations or for the use in performing special events, professional or other services in accordance with customary museum, charitable trust and/or business practices; (7) any liens, encumbrances and title matters existing on the date of execution of this Lease, including matters which are discoverable by a survey or inspection of the Premises; and (8) Encumbrances necessary to repair the Premises in the event of damage or destruction to the Premises.

53. **"Permitted Uses"** means those uses set forth in Section 8.1 [Permitted Uses].
54. **"Person"** means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision hereof.
55. **"Premises"** has the meaning given in Section 3.1 [Leased Premises] hereof and as more particularly described and depicted on Exhibits A-1 and A-2. The Premises shall include any permitted Improvements, including the Project, together with any additions, modifications or other Alterations thereto permitted hereunder, and any and all utilities located on and serving the Premises. Notwithstanding anything to the contrary in this Lease, the Premises do not include the rights reserved to City pursuant to Section 3.2, nor the Park Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises, nor any paved, public streets located within the Premises.
56. **"Prohibited Activities"** means the following activities:

    (a) any activity that creates a public or private nuisance under applicable Laws;

    (b) any activity that is not within the Permitted Uses, including any use not authorized under any applicable annual Management Plan;

    (c) any activity or object that causes material damage or material injury to the Premises;

    (d) any activity that will in any way materially injure, materially obstruct or materially interfere with rights of any owners or occupants of adjacent properties, including the Park Facilities;

    (e) use of the Premises for sleeping or personal living quarters;

    (f) any distress, fire bankruptcy or going-out-of-business sale on the Premises without the prior written consent of the Commission;

    (g) any activity that will cause a cancellation of any insurance covering the Premises;

(h) any activity or use which is not in compliance with all applicable Laws concerning the Premises or Tenant's use and occupancy of the Premises; and

(i) any granting of licenses, easements or access rights over the Premises by Tenant if the same would be binding on City's reversionary interest in the Premises, or changes in applicable land use Laws or conditional use permits for any uses not provided for hereunder, in each instance without the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, and subject to the provisions of Section 14 [Compliance with Laws].

57. **"Project"** means as defined in Recital E, above.
58. **"Regulatory Approval"** means any authorization, approval or permit required by an governmental agency having jurisdiction over the Project or the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Department of Building Inspection and the Commission.
59. **"Release"** when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant or Landlord, or in, on, under or about the Premises or Park Facilities or any portion thereof.
60. **"Remediation"** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or the Park Facilities or which have been, are being, or threaten to be released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.
61. **"Reserved Rights"** means certain rights reserved by the City relating to the Premises, including the following:

(a) Any and all water and water rights, including, but not limited to, (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to unreasonably interfere with the permitted use thereof by Tenant, without Tenant's prior written consent, which may be withheld by Tenant in its reasonable discretion;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the Park Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall not unreasonably interfere with Tenant's use and operation of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of Section 3.2(e) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio devices, cables and other equipment associated with a telecommunications cell site, provided that any such easement, right-of-way, permit or license shall not unreasonably interfere with Tenant's use and operation of the Premises hereunder, and provided further that the grant of any such easement, right-of-way, permit or license shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, right of way, permit or license; and

(g) All additional rights of access provided for in Section 21[Access by City] below.

(h) Any approval rights of the Commission or the Director over Tenant's use and operation of the Premises provided for in this Lease, and the authority of the Commission and the Director over the Premises, including all Improvements thereon, under applicable Law.

62. **"Restoration"** means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. All Restoration shall be conducted in accordance with the provisions of Section 11 [Subsequent Construction]. ("Restore" and "Restored" shall have the correlative meanings.)
63. **"Rules and Regulations"** means those rules and regulations of the Commission regarding operation of the Premises set forth in Exhibit C attached hereto and subject to change from time to time.
64. **"Significant Changes"** means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of ownership interests in Tenant, in one or more transactions (collectively, a "Transaction"), by operation of law or otherwise, that results in any of the following:

(a) As to the original named Tenant hereunder, a change in the identity of the Person Specially Controlling Tenant, or (ii) as to any successor permitted Tenant hereunder, a change in the identity of the Person Specially Controlling said Tenant (herein, the "**Tenant Owners**"), such that the Tenant Owners which, collectively, have Special Control of Tenant as of the date immediately prior to the Transaction no longer are Specially Controlling Tenant from and after the date of such Transaction;

(b) The dissolution of Tenant, or

(c) The sale of over fifty percent (50%) of the assets of Tenant.

65. **"Special Control"** means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and "Specially Controlling" and "Specially Controlled" shall have correlative meanings).
66. **"Sublease"** has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
67. **"Subsequent Construction"** means all repairs to and reconstruction, replacement, addition, expansion, restoration, Alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Improvements.
68. **"Tenant"** means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.
69. **"Tenant's Personal Property"** means the personal property of Tenant, including all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible or movable personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor that can be removed without structural or other material damage to the Improvements or the Premises.
70. **"Term"** means the term of this Lease as determined under Section 4.1 [Term of Lease] hereof.
71. **"Transfer"** means any Assignment, Sublease or Significant Change.
72. **"Transferee"** means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Section 17 [Assignment and Subletting] hereof.
73. **"Trustee"** means the trustee bank or banks appointed as trustee for the holders of the Bonds.
74. For purposes of Section 11 only, **"Work"** means as defined in Section 11.7.

EXHIBIT A

PREMISES

[See Attached Exhibits A-1 And A-2]

EXHIBIT A-1

DESCRIPTION OF PREMISES

EXHIBIT A-2

MAP OF PREMISES
EXHIBIT A-1

EXHIBIT B

MITIGATION MEASURES

EXHIBIT C

RULES & REGULATIONS

EXHIBIT D

MEMORANDUM OF LEASE COMMENCEMENT DATE

Appendix F

FINE ARTS MUSEUMS OF SAN FRANCISCO

Board of Trustees
January 31, 2002

Approval of Two Additional Venues to Previously Approved Loan Request:

From: Museum of Contemporary Art

For: Willem de Kooning: Tracing the Figure
Museum of Contemporary Art, Los Angeles: 2/10/02 - 4/28/02
San Francisco Museum of Modern Art, San Francisco: 6/15/02 - 9/8/02
National Gallery of Art, Washington, D.C.: 9/29/02 - 1/5/03

Willem de Kooning (American, 1904-1997)
Untitled (Two Figures), circa 1947
Oil, watercolor, charcoal, and graphite, 57.2 x 55.9 cm
Fine Arts Museums of San Francisco, Museum Purchase,
Gift of Mrs. Paul L. Wattis
1999.131

Insurance Valuation: $1,200,000

Stipulations: The work of art will be accompanied by a FAMSF courier to Los Angeles and return from Washington, D.C. All related expenses will be paid by the requesting organization.

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Appendix G

FINE ARTS MUSEUMS OF SAN FRANCISCO

Board of Trustees
January 31, 2002

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SAN FRANCISCO
PUBLIC LIBRARY

Meeting Schedule

A. Executive Committee Meetings

Date	Time	Location
February 14, 2002	noon	6th Floor, 233 Post Street **cancelled**
March 14, 2002	noon	6th Floor, 233 Post Street
May 9, 2002	noon	6th Floor, 233 Post Street
September 12, 2002	noon	6th Floor, 233 Post Street
November 14, 2002	noon	6th Floor, 233 Post Street
December 12, 2002	noon	6th Floor, 233 Post Street

B. Board of Trustees Meetings

Date	Time	Location
January 31, 2002[1]	3 p.m.	Board Room, Legion of Honor
April 11, 2002	3 p.m.	Board Room, Legion of Honor
June 13, 2002	3 p.m.	Board Room, Legion of Honor
October 10, 2002	3 p.m.	Board Room, Legion of Honor

C. Future Events

Date	Event
January 31, 2002	Opening of *Dreaming with Open Eyes: The Vera, Silvia, and Arturo Schwarz Collection of Dada and Surrealist Art in the Israel Museum*
February 6, 2002	Opening of *Masterworks of New Guinea Art: Selections from The Marcia and John Friede Collection*
February 7, 2002	Tribal Arts Show Benefit
March 2-9, 2002	Museum Associates Trip to the Netherlands
March 11-15, 2002	Bouquets to Art
May 15-19, 2002	New de Young Museum Groundbreaking Events
June 13, 2002	Opening of *Michael Sweerts: Traveling Artist of the 17th Century*

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[1] Change in meeting date from January 10, 2002 to January 31, 2002 .

-- over --

Fine Arts Museums of San Francisco
Board of Trustees
January 31, 2002

D. Current and Future Exhibitions (*Exhibitions organized by FAMSF)

Title	Date	Museum/Gallery
Triumph of Fortitude and Triumph of Prudence	02/10/01-02/24/02	Legion 2/3
Recent Acquisitions of Contemporary California Works on Paper*	10/27/01-02/24/02	Legion 1
Richard Diebenkorn: Clubs and Spades*	01/19/02-04/28/02	Legion A
A toute épreuve: An Artists Book Masterpiece by Joan Miró	01/26/02-05/19/02	Legion L
Masterworks of New Guinea Art: Selections from The Marcia and John Friede Collection*	02/02/02-04/28/02	Legion 6
Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum, Jerusalem	02/02/02-04/28/02	Legion B-F Rosekrans
Bouquets to Art	03/12/02-03/15/02	Legion All
Recent Acquisitions of Contemporary Works on Paper, Part II: Everywhere but California*	03/09/02-06/23/02	Legion 1
Logan Book Gallery	05/25/02-09/15/02	Legion L
Michael Sweerts: Traveling Artist of the 17th Century*	06/1502-08/25/02	Legion 6
Eternal Egypt: Masterworks of Ancient Art from The British Museum	08/10/02-11/03/02	Legion A-F, Rosekrans, 10
Philip Guston*	10/12/02-01/00/03	Legion 1
Hard Edge: Abstract Prints from Albers to Held*	11/30/02-03/23/03	Legion A
Casting a Spell: Winslow Homer, Artist And Angler*	12/07/02-02/09/03	Legion B-F, Rosekrans
Leonardo da Vinci and The Splendor of Poland	03/11/03-03/14/03	Legion B-F, Rosekrans

Appendix B
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FINE ARTS MUSEUMS OF SAN FRANCISCO

Special Meeting
Board of Trustees

January 31, 2002

I. Calling of the Meeting to Order – Diane B. Wilsey, President

A meeting of the Board of Trustees of the Fine Arts Museums of San Francisco was held on Thursday, January 31, 2002, in the Board Room of the California Palace of the Legion of Honor, Lincoln Park, San Francisco. A quorum was present that being one-third of the number of Trustees in office. The meeting was called to order at 1:40 p.m. It was noted that the meeting was scheduled to begin at 1:30 p.m. with a workshop on the New de Young Financing Plan to address issues raised in a tax exempt bond financing for the new building and the associated draft Lease and Facilities Agreement between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation. Regular business was scheduled to commence at 3:00 p.m. Additionally, it was noted that the date of the meeting changed from January 10, 2002 to January 31, 2002 in order to accommodate the City review and approval process for the revisions to the Final Environmental Impact Report for the new de Young Museum. Because of these changes in meeting time and date, this meeting was noticed as a special meeting of the Board of Trustees.

President Wilsey presided; Mrs. Gough acted as Secretary.

II. Calling of the Roll

The following Trustees were present:

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Del M. Anderson
Alvin H. Baum, Jr.
Jamie Nicol Bowles
T. Robert Burke
Barnaby Conrad III
Marion Moore Cope
Belva Davis, Vice President/Civic Affairs and Audience Development
Dagmar Dolby
Richard P. Essey
Morgan Flagg
Harrison S. Fraker, Jr.
Dr. Rupert Garcia
Constance Goodyear
George Hecksher
J. Burgess Jamieson
Stephen L. Johnson

William R. Kimball
Diane B. Lloyd-Butler, Vice President/Marketing and Communications
Nion McEvoy
J. Alec Merriam, Vice President
Josie Mooney
Joy Ou
Marianne H. Peterson
Shelagh Rohlen, Vice President/Annual Support
George B. Saxe
Randolph R. Scott
Burl A. Toler, Sr.
Vivian Fei Tsen
Carlos Villa
Nancy Willis
Diane B. Wilsey, President

On motion, duly seconded and carried unanimously, the following Trustees were excused:

Cheryl H. Bancroft
Alix Phillips Becker
George McNear Bowles
Barbara B. Carleton
Iris S. Chan
Richard H. Finn
Mara Fritz
Richard N. Goldman
Nancy Hamon
Jacqueline Hoefer
Beverly James
Ann L. Johnson, M.D.
Terrence Johnson
Nancy McBean
Lorna F. Meyer
Robert P. Morrow III, Vice President/Finance
Lonna Wais
Margaret Wetzel
David Winton

The following ex-officio Trustees were unable to be present:

Mayor Willie L. Brown, Jr.
Gordon Chin, President, Recreation and Park Commission

Other Trustees in attendance were:

Keith Eickman
George Hopper Fitch
William Fries II
Frankie Jacobs Gillette
Richard W. Goss II
David R. Hoyer
Leonard E. Kingsley
Sylvia Kingsley
Stephanie MacColl
Gail Merriam
Steven MacGregor Read
Katharine Doyle Spann
William A. Stimson
Florence Sue Wong

III. Workshop on the New de Young Financing Plan to Address Issues Raised in a Tax-Exempt Bond Financing for the New Building and the Associated Lease and Facilities Agreement Between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation

The workshop commenced with the clarification that no action would be taken during the workshop portion of the discussions. Consideration of the New de Young Financing Plan and the Lease and Facilities Agreement between the Fine Arts Museums of San Francisco (FAMSF) and The Fine Arts Museums Foundation (Foundation) will continue as Items III. D. and III. E. later in the agenda. Public testimony will occur following the latter discussions of these matters and before the Trustees take any action.

Mr. Parker reported that during the past two years, the Foundation has considered at length and in depth the most effective way to finance the construction of the New de Young Museum in Golden Gate Park. Following the loss of the second proposed City and County of San Francisco general obligation bond measure in 1998, Mayor Willie L. Brown, Jr., offered the assistance of Monique Moyer, Director of Public Finance, Mayor's Office of Public Finance, to assist in structuring the most cost efficient financing for the New de Young Museum.

He introduced Ms. Moyer, who in turn introduced the other members of the New de Young Financing Team: Nikolai J. Sklaroff, SalomonSmithBarney; Richard W. Chisholm, Banc of America Securities LLC; Michael Cohen, Deputy City Attorney (Real Estate); William Madison, Esq., Jones Hall (Bond Counsel); Adam Sachs, Esq., Folger Levin & Kahn (the Museums' 501(c)(3) counsel); and Steve Dykes, Deputy Director for Administration and Finance. It was noted that President Wilsey and Director Parker also participate as members of the New de Young Financing Team, as well as Deputy City Attorneys Adine Varah, Hazel Brandt, and Theresa Alvarez, and Sean Tierney, Hawkins, Delafield & Wood (Underwriters Counsel).

Ms. Moyer reported that the Financing Team analyzed a number of financial structures before recommending tax exempt financing available to nonprofit organizations as a means of financing the New de Young Museum. She reviewed the document entitled, "The New de Young Museum / Fine Arts Museums Board of Trustees / Finance Workshop / January 31, 2002", distributed at the meeting and attached to these minutes as Appendix I. A second document, "New de Young Museum, Revenue Bonds, Series 2002, Fine Arts Museums Board of Trustees, Workshop, January 31, 2002" was distributed for review prior to the meeting.

Ms. Moyer noted the exceptional capital campaign, which has raised over $152 million in cash gifts and pledges to date towards the $165 million campaign goal. The cost of the construction is $185 million, $20 million more than the campaign goal. The schedule of donor pledges over a five year period and the construction schedule for the New de Young Museum will require contractor payments before the pledges are received. The majority of the spending will occur within three years of construction. The foremost reason for issuing the debt is to provide a bridge loan for the cash to pay construction costs while the pledge receipts are being received.

Secondly, the bond offering is necessary to make up the $20 million difference between the $185 million construction cost and the $165 million fund-raising campaign. The bond offering is an opportunity to maximize legal arbitrage on the invested funds, which is a common transaction for 501(c)(3) entities, particularly for universities. The New de Young funds will be invested at interest rates higher than the interest rates paid to carry the debt. Unrestricted pledge money will be deposited into the New de Young Fund of the Foundation, which will be part of the balance sheet. Investment income will cover annual debt service and bond payment in about thirty years.

Short-term Variable Rate Demand Obligations and Auction Rate Securities would be issued with a guaranteed investment contract, generating a 135 basis point return (1.35%) higher than interest costs. For example, an interest rate of approximately 2% could be paid with guaranteed earnings of 3.35%.

An entity licensed to issue the bonds is required. It is recommended that the ABAG Finance Authority for Nonprofit Corporations, one of three licensed entities in California, serve as the conduit issuer of the bonds. The borrowers are the Foundation and the Corporation of The Fine Arts Museums (COFAM), both qualified 501(c)(3) organizations. The amount to be borrowed is approximately $128,350,000 (70% lien-to-equity ratio) over a 30 year term payable in full at any time without penalty. This amount is preliminary and subject to change. The security for the transaction is the full faith and credit of the co-borrowers and excludes restricted assets (donations, grants, restricted endowment, etc.), and the art collection. The rating on the bonds will be in the A- to A range as mid-level investment grade bonds. Bids from the bond insurers are due soon.

Ms. Moyer responded to questions raised by Trustees Willis, Jamieson, Flagg, Scott, Saxe, Burke and Hecksher as follows:

- The bonds will mature in thirty years. They are payable in full at any time without penalty.
- Unlike a fixed interest rate bond, the bonds will be resold every thirty days.
- The Board of Supervisors will need to adopt a TEFRA (Tax Equity and Fiscal Responsibility Act) resolution, following the December 17, 2001 public hearing regarding the New de Young tax exempt bonds held by the Director of Public Finance. The ABAG Finance Authority for Nonprofit Corporations will issue the bonds and loan the proceeds to COFAM and the Foundation to build the New de Young Museum. Federal tax law requires public notice and a hearing under these circumstances. The Board of Supervisors will not take a position on the creditworthiness of the New de Young financing, nor is the City responsible to meet bond debt service and payment.
- The collateral required for a bank loan is substantially more than COFAM and the Foundation have available.
- A guaranteed investment contract will be purchased from a Wall Street firm to invest the money and deliver a guaranteed return locking in a 135 basis point spread above a municipal bond market index.

Deputy City Attorney Michael Cohen then discussed the Lease and Facilities Agreement for the New M. H. de Young Museum attached as Appendix II, which serves to enhance the creditworthiness of the bonds. Once the new building is finished, title passes to the City, which leases it back to the Foundation for up to thirty-five years. The lease avoids attempting to re-characterize or re-define the roles or responsibilities of FAMSF under the San Francisco Charter or the Administrative Code. Instead, those laws are simply incorporated by reference, so that if they are amended at a later date, those changes will occur automatically without having to amend the lease itself.

The lease codifies FAMSF's relationship with the Foundation and preserves for FAMSF maximum flexibility in making future decisions regarding the Museums while still achieving the underlying goal of enhancing the creditworthiness of the bonds. Furthermore, in recognition of the Tenant's charitable function, it shields the Foundation from open-ended financial and legal liabilities. In this regard, the lease in many respects operates more like a management agreement (with the Foundation managing the City's asset pursuant to the City's direction) than a lease (where the City would normally transfer most of the control and the financial obligations and liabilities of the Foundation).

The lease also preserves in FAMSF the flexibility to define the respective roles and responsibility of the City and the Foundation for the use and operation of the new Museum for the next thirty-five years and sets forth processes for allocating rights and responsibilities instead of attempting to allocate those rights and responsibilities in the lease itself. The key element of that process is a requirement that FAMSF approve each year a management plan governing the use and operation of the Museum.

The principal way in which the lease enhances the creditworthiness of the bonds is through a negative pledge, which imposes a strict limitation on FAMSF's ability to encumber or otherwise dispose of the new Museum during the term of the lease. Specifically, the lease prohibits FAMSF from creating any new encumbrance on the premises, without the prior written consent of the Foundation and limits FAMSF's ability to sell or otherwise dispose of a material portion of the Museum.

At the request of Mr. Parker, and in response to questions raised by Trustees Tsen and Burke, Deborah Frieden, de Young Project Director, clarified that demolition is scheduled to begin in March 2002, with excavation following in June and construction commencing in the fall. A guaranteed, final construction cost will not be known until November 2002 when all the bidding on the project is completed. Ms. Moyer noted that the insurers are impressed by the success of the capital campaign. It is unusual to issue the debt in advance of a signed construction contract with a guaranteed maximum price. Mr. Parker stated that it was decided to proceed without a guaranteed maximum price because it is advantageous to begin earning interest to pay for construction costs as soon as possible.

Trustee Kingsley then reiterated the thoughtful and detailed deliberations of the Board of Trustees of the Foundation over the past two years to identify the most effective way to finance the construction of the New de Young Museum.

In conclusion, Ms. Moyer reviewed the revised financing schedule, noting that a special meeting of the Board of Trustees of the Foundation has been set for March 12, 2002 to finalize the New de Young Financing Plan and the Lease and Facilities Agreement; that the Executive Committee of the COFAM Board of Trustees is scheduled to consider approval of the Borrowers Documents on March 14, 2002; that the ABAG Finance Authority hearing and approval will take place on March 18, 2002; with the sale of the bonds scheduled for March 26, 2002 and the bond closing on April 3, 2002.

Mr. Parker emphasized the importance of maintaining a strong public component to the Fine Arts Museums. The history of the Museums and its collections are rooted in its public orientation. The narrow defeat of two proposed City of San Francisco general obligation bond measures in 1996 and 1998 resulted in the Board's decision to raise the funds required to build the New de Young Museum from private sources. As we move forward, the role and responsibilities of the private sector may take on even greater significance.

There being no further questions, the Board of Trustees expressed appreciation to Ms. Moyer and the members of the New de Young Financing Team for their diligent efforts in developing the New de Young Financing Plan with a round of applause.

IV. Report of the President – Diane B. Wilsey

A. Consideration and Possible Action to Approve the Minutes of the December 13, 2001 Meeting of the Executive Committee of the Board of Trustees

There being no discussion among the Trustees or members of the public, the minutes of the December 13, 2001 meeting of the Executive Committee of the Board of Trustees, having been mailed in advance to all Trustees, were unanimously approved.

B. Report on 2001 Year-End Gifts of Works of Art – J. Alec Merriam, Chair, Acquisitions Committee of The Fine Arts Museums Foundation

At the request of Chair Merriam, Steve Nash, Associate Director and Chief Curator, presented the Report on 2001 Year-end Gifts of Works of Art. Approximately 350 works of art were received as listed in Appendix III of these minutes. These gifts were accepted with sincere appreciation to each donor pursuant to Board Resolution 1393, which allowed the Director or his designee to accept the year-end gifts to the Fine Arts Museums of San Francisco or The Fine Arts Museums Foundation during the period from November 30, 2001 (last meeting of the Acquisitions Committee) through December 31, 2001.

Dr. Nash discussed several of the year-end gifts: 1) Ghana, Portrait Head of a Royal Person, 17th century; 2) 58 objects from the Philippines; 3) a major painting by Wayne Thiebaud, Ponds and Streams, 2001 (90% partial interest); 4) an additional 10% partial interest in Portrait of Albert Post, circa 1864, by Winslow Homer; 5) Flower Girl, early 20th century, by Nicolai Fechin (25% partial interest); 6) Two Piece Reclining Figure No. 9, 1968, by Henry Moore (10% partial interest); 7) a group of large-scale photographs mostly from Egypt, G. Lekegian and Company (France), active mid-19th century; 8) Western Hills Memorial City, Lawndale, California (Project for Mrs. Annie Darbee), ca. 1939, by Bernard Maybeck; 9) Turkmen, Yomut sub-group, Asia, Main Carpet, 18th century; and 10) a gift of costumes from the mid-1930s.

In closing, Dr. Nash presented a recent purchase, Nacht I (Die Nacht I), by Albert Bloch (American, 1882-1961), which was on view during the meeting.

C. Report on Recent Developments Regarding the Plans to Build a New de Young Museum in Golden Gate Park

1. Presentation on Recent Developments Regarding the Design of the New de Young Museum in Golden Gate Park – Pierre de Meuron, Herzog & de Meuron Architekten AG

President Wilsey introduced Pierre de Meuron, Herzog & de Meuron Architekten AG, who presented recent developments regarding the design of the New de Young Museum in Golden Gate Park. Mr. de Meuron began by stating that it has been three years since Herzog & de Meuron Architeckten AG was selected as the architects for the New de Young Museum. His presentation summarized the three years of planning and design development, most of which had been previously presented to the Board of Trustees. He expressed his gratitude for this opportunity and his confidence in the project, pointing out that the architecture will reflect the open and ongoing dialogue between the architectural team, staff, Trustees, and community members, and the diverse cultures represented in the Museums' permanent collection. The following highlights his power point presentation:

- The geometry of the New de Young in relation to the Concourse and the Academy of Sciences, and the City of San Francisco is important. The primary relationship of the Museum to the Concourse and the Academy of Sciences will not change.

- The design merges nature and architecture. The building is comprised of three bands with spaces between each band, which allow the Park to penetrate into the building and the building to reach into the Park.

- The architecture of the three bands allows for galleries and courts, and brings daylight into the Museum. The bands meet becoming connecting points between the different areas of the Museum and the collections. Each collection occupies its own unique space but is related to the other collections.

- The new building totals approximately 292,000 square feet with a smaller footprint than the former de Young/Asian building, thereby returning green area back to the Park.

- There are three ground level entry points: a) the main entrance on the Concourse; b) a northeast entrance at the Garden of Enchantment off Kennedy Drive; and c) a southwest entrance from the proposed sculpture garden adjacent to the Japanese Tea Garden.

- There is a double-height main court in the center of the building, where orientation to the entire museum including all of the galleries is possible. Each of the collections can be accessed from the main court, and the public will be able to walk through the building on the ground level without charge. The museum store, Family Room, children's gallery, auditorium, catering and kitchen spaces, restaurant and restrooms are located on the ground floor.

- Native American art and 20th century American art galleries are located on the 1st level. The main stairway leads to the 2nd floor, which houses the Africa, Art of the Pacific Islands, 19th century American art, and the Textiles galleries. The Textiles conservation labs are also located on the 2nd floor. The below ground level connects directly to the proposed underground parking garage being planned by the Concourse Authority. Temporary exhibition space, an auditorium, which can also be accessed via the ground floor, storage and plant facilities are located on this lower level.

- The 19th century and contemporary galleries are classical in nature with the works of art hung on the walls and sculpture and furniture objects placed within the space. Objects from other cultures, primarily religious in nature and not originally created for museum viewing such as the works in the Africa, Oceania and the Americas collection, occupy more fluid spaces utilizing large vitrines.

- The education tower is an important architectural feature of the new building. It is a vertical element intended to serve as an institutional and architectural landmark. At its base, the tower reflects the geometry of the Concourse and twists upward to represent the geometry of the City at its top. It is a symbolic link between Golden Gate Park and the City. It will house the various components of the education program, including class rooms, artist studios, volunteer and docent space. The observation floor at the top will provide a 360 degree view of the Park and San Francisco.

- The copper façade concept developed from pictures of trees in the Park, which were transformed into black and white images of leaves representing the play of light and shadow. Negatives of the images were pixalized, and a pattern of the digitized images developed. The three-dimensional digitized images are embossed on industrialized copper. The panels vary with differing degrees of perforation, solidity, flatness, and embossing, all reflecting the landscape of the Park. Over time, the copper will develop a patina and turn green.

Mr. de Meuron concluded his presentation. The Board of Trustees acknowledged Mr. de Meuron and his presentation on the design for the New de Young Museum in Golden Gate Park with an enthusiastic round of applause.

Trustee Steven Macgregor Read, Chair of the New de Young Building Committee, reported that at its meeting on January 29, 2002, the Committee reviewed the design in detail and recommended approval of the New de Young Museum design to the Board of Trustees for approval.

2. Report on the December 6, 2001 Public Hearing Before the San Francisco Planning Commission Regarding the Revisions to the Final Environmental Impact Report (FEIR) for the Proposed de Young Museum Project Pertaining to the Height of the Education Tower and to Some Aspects of the Analysis of the Impact on Historic Resources and the San Francisco Planning Commission's Action to Certify the Revisions to the FEIR for the Proposed de Young Museum

President Wilsey reported on the December 6, 2001 public hearing before the San Francisco Planning Commission regarding the revisions to the Final Environmental Impact Report (FEIR) for the proposed de Young Museum project. The revised FEIR corrected sections pertaining to the height of the Tower and the related analyses, as well as some aspects of the analysis of the impacts on historic resources. The Planning Commission voted unanimously to certify the revised FEIR.

3. Report on the Public Hearing of the Board of Supervisors on January 14, 2002 Regarding the Appeal of the Planning Commission's Certification of the Revised Final Environmental Impact Report (FEIR) for the Proposed de Young Museum Project, Which Includes Revisions Pertaining to the Height of the Education Tower and to Some Aspects of the Analysis of the Impact on Historic Resources, and the Subsequent Action of the Board of Supervisors to Uphold the Decision of the San Francisco Planning Commission to Certify the Revised FEIR for the Proposed de Young Museum Project

On January 14, 2002, a public hearing before the Board of Supervisors was held regarding the appeal of the Planning Commission's Certification of the revised FEIR for the proposed de Young Museum project. President Wilsey advised that the Board of Supervisors voted ten to one to uphold the decision of the San Francisco Planning Commission made on December 6, 2001 to certify the revised FEIR.

4. Report on the Public Hearing of the Recreation and Park Commission on January 17, 2002 Regarding the Shadow Impacts of the New de Young Museum Project on Golden Gate Park

A public hearing before the Recreation and Park Commission was held on January 17, 2002 regarding the shadow impacts of the de Young Museum project on Golden Gate Park. President Wilsey reported that the Recreation and Park Commission determined by a unanimous vote that the shadow impacts are not significant.

5. Report on the Public Hearing of the San Francisco Planning Commission on January 24, 2002 and Its Determination Regarding (a) Findings Pursuant to California Environmental Quality Act Regarding the New de Young Museum Project, (b) Shadow Impacts of the New de Young Project on Golden Gate Park as Required by Planning Code Section 295, (c) Finding the New de Young Museum Project Consistent with the General Plan. Report on the Zoning Administrator's Hearing Regarding the Parking Variance on January 24, 2002 Held Concurrently with Planning Commission Hearing

At the request of President Wilsey, Kate Stacy, Deputy City Attorney, reported on the January 24, 2002 public hearing before the San Francisco Planning Commission. Ms. Stacy advised that the Planning Commission took three separate actions at the January 24, 2002 public hearing: 1) adopted findings pursuant to the California Environmental Quality Act addressing the environmental impacts of the New de Young Museum project; 2) adopted a motion finding that the shadow impacts of the de Young Museum project on Golden Gate Park were not significant; and 3) adopted a motion finding that the New de Young Project was consistent with the General Plan. In addition, Ms. Stacy reported that the Zoning Administrator held a public hearing simultaneously with the Planning

Commission public hearing on January 24, 2002, regarding the parking variance. The Museums had requested a variance from the code requirements to provide 156 parking spaces. On January 28, 2002, the Zoning Administrator issued his decision granting the parking variance. It was noted that the Planning Commission draft motions regarding the General Plan referral and the shadow impacts determination were distributed for review prior to the meeting.

President Wilsey particularly recognized the efforts of Director Parker and members of the senior management staff regarding the successful outcome of the City approval process for the revised FEIR for the de Young Museum project.

6. Consideration and Possible Action to Adopt a Resolution Adopting the Findings Pursuant to California Environmental Quality Act Regarding the New de Young Museum Project Environmental Impact Report Including Mitigation Measures, Rejection of Alternatives, Statement of Overriding Considerations and Mitigation Monitoring Program, Approving the Design of the New de Young Museum Project and Authorizing the Corporation of The Fine Arts Museums to Proceed with the Project

President Wilsey introduced the resolution attached hereto as Appendix IV and which was distributed prior to the meeting. The resolution adopts the findings pursuant to the California Environmental Quality Act regarding the New de Young Museum Project Environmental Impact Report including mitigation measures, rejection of alternatives, statement of overriding considerations and mitigation monitoring program, approves the design of the New de Young Museum Project and authorizes the Corporation of The Fine Arts Museums to proceed with the Project.

A motion was made and seconded to adopt the resolution. Trustee Kingsley offered words of appreciation to President Wilsey and Director Parker for their extraordinary efforts and remarkable persistence in building a New de Young Museum in Golden Gate Park. The Board of Trustees acknowledged President Wilsey and Director Parker with a heartfelt round of applause. Trustee Fraker expressed gratitude on behalf of the architectural community to the architects and the Board of Trustees for the design achievement represented by the New de Young Museum. The New de Young will be a destination museum for the world to view. There was no further discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to adopt the resolution attached hereto as Appendix IV as **Board Resolution 1397**.

D. Consideration and Possible Action to Adopt a Resolution Approving the New de Young Financing Plan Proposed by the Corporation of the Fine Arts Museums and The Fine Arts Museums Foundation

President Wilsey pointed out that this resolution relates to the workshop held earlier in this meeting about the New de Young Financing Plan, involving the issuance of tax-exempt bonds. She proceeded to read the resolution as follows:

WHEREAS, The highest institutional priority of the Fine Arts Museums of San Francisco is to build a New de Young Museum in Golden Gate Park; and

WHEREAS, Efforts to secure public funding for a New de Young Museum were unsuccessful with San Francisco general obligation bonds failing to meet the 66.7% requirement for passage in 1996 (62.6% yes votes) and 1998 (64.3% yes votes); and

WHEREAS, At the request of the Board of Trustees of the Fine Arts Museums of San Francisco, the Capital Campaign for a New de Young Museum was initiated by the Corporation of The Fine Arts Museums with a fund-raising goal of $165 million, of which over $150 million has been raised to date; and

WHEREAS, The schedule of pledges extends over a five year period, and the construction schedule for the New de Young Museum will require immediate payments before the pledges are received; and,

WHEREAS, The Board of Trustees of the Fine Arts Museums has reviewed the Final Environmental Impact Report for the New de Young Project, and adopted CEQA findings for approval of the Project at this January 31, 2002 meeting under Agenda Item III.C(6), which findings are incorporated by reference herein; now, therefore, be it

RESOLVED, That to meet the cash flow requirements for the construction of the New de Young Museum, the Board of Trustees of the Fine Arts Museums of San Francisco does hereby approve the New de Young Financing Plan and supports the decision of the Corporation of The Fine Arts Museums and The Fine Arts Museums Foundation to seek the sale and issuance of tax-exempt bonds by the appropriate state financing authority, which will be guaranteed by the future flow of pledges; and, be it

FURTHER RESOLVED, That the President of the Board of Trustees and Director of Museums are hereby authorized to take all necessary steps to facilitate the issuance of said tax-exempt bonds.

A motion was made and seconded to adopt the resolution. There was no additional discussion among Trustees or Trustees Emeriti. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution as **Board Resolution 1398.**

E. Consideration and Possible Action to Adopt a Resolution Approving the Draft Lease and Facilities Agreement Between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation and Authorizing the Director of Museums to Take All Necessary Steps to Finalize and Execute Such Agreement (Including Any Attached Exhibits) in Substantially the Form Attached Hereto and Approved as to Form by the City Attorney

President Wilsey noted that presentation and discussion of the Draft Lease and Facilities Agreement between the Fine Arts Museums of San Francisco and The Fine Arts Museums Foundation distributed prior to the meeting occurred during the workshop portion of the meeting. She then read the following resolution:

WHEREAS, The Board of Trustees of the Fine Arts Museums of San Francisco (FAMSF) has approved the New de Young Financing Plan and supports the decision of the Corporation of The Fine Arts Museums (COFAM) and The Fine Arts Museums Foundation (Foundation) to seek the sale and issuance of tax-exempt bonds by the appropriate state financing authority, which will be guaranteed by the future flow of pledges; and

WHEREAS, To secure such financing, the role of the Foundation is critical in generating future revenues required over the anticipated thirty year term of the tax-exempt bonds; and

WHEREAS, A Lease and Facilities Agreement between FAMSF and the Foundation defines the respective roles and responsibilities of FAMSF and the Foundation for the use and operation of the New de Young Museum and will help facilitate the financing for the New de Young Museum; and

WHEREAS, The Foundation is a non-profit charitable organization whose primary purpose is to support the activities of FAMSF; and

WHEREAS, The Board of Trustees of the Fine Arts Museums has reviewed the Final Environmental Impact Report for the New de Young Project and adopted CEQA findings for approval of the Project at this January 31, 2002 meeting under Agenda Item III.C(6), which findings are incorporated by reference herein; now, therefore, be it

RESOLVED, That the Board of Trustees of FAMSF hereby finds that in light of the Foundation's primary charitable purpose to support the activities of FAMSF, the Foundation's use of the museum facilities in accordance with the terms of the Lease and Facilities Agreement is an appropriate use of such museum facilities and will provide a benefit to FAMSF and the public; and, be it

FURTHER RESOLVED, That the Board of Trustees of FAMSF hereby approves of the Lease and Facilities Agreement between FAMSF and the Foundation and the transaction contemplated therein and authorizes the Director of Museums to take all necessary steps to finalize and execute the Lease and Facilities Agreement (including any attached exhibits) in substantially the form attached hereto and approved as to form by the City Attorney; and, be it

FURTHER RESOLVED, That the Board of Trustees of FAMSF further authorizes the Director of Museums to enter into any additions, amendments or other modifications to the Lease and Facilities Agreement (including, without limitation, the attached exhibits), approved as to form by the City Attorney, that the Director of Museums determines are in the best interests of FAMSF, do not decrease the benefit to FAMSF or otherwise materially increase the obligations or liabilities of FAMSF in connection with the Lease and Facilities Agreement, and are necessary or advisable to complete the transaction contemplated in the Lease and Facilities Agreement and to effectuate the purpose and intent of this resolution; and, be it

FURTHER RESOLVED, That any actions previously taken by any City employee or official with respect to the Lease and Facilities Agreement are hereby ratified and affirmed.

President Wilsey stated that because of her role as a Board member of The Fine Arts Museums Foundation she would abstain from voting and participating in discussion of the Draft Lease and Facilities Agreement between FAMSF Board of Trustees and the Foundation. Likewise, due to his role as a Board member of The Fine Arts Museums Foundation, Trustee J. Alec Merriam also abstained from voting and participating in discussion of the proposed Lease and Facilities Agreement between the FAMSF Board of Trustees and the Foundation.

A motion was made and seconded to adopt the resolution. There was no additional discussion among Trustees or Trustees Emeriti. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution as **Board Resolution 1399.**

F. Report of the Nominating Committee – Nion McEvoy, Chair

1. Consideration and Possible Action to Accept the Resignation of Terrence Johnson from the Board of Trustees of the Fine Arts Museums of San Francisco

In the absence of Chair McEvoy, President Wilsey reported that Trustee Terrence Johnson has expressed the need to resign from the Board of Trustees. Increased business obligations preclude his continued, active participation as a member of the Board. A motion was made and seconded. There was no discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to accept with regret the resignation of Terrence Johnson from the Board of Trustees of the Fine Arts Museums of San Francisco.

F. Report on the Cancellation of the February 14, 2002 Executive Committee Meeting

President Wilsey reported that the February 14, 2002 meeting of the Executive Committee of the Board of Trustees has been canceled.

V. Director's Report – Harry S. Parker III

A. Consideration and Possible Action to Approve Two Additional Venues to a Previously Approved Loan Request

Mr. Parker presented the two additional venues to a loan request approved by the Board of Trustees at its October 18, 2001 meeting:

From:	Museum of Contemporary Art
For:	Willem de Kooning: Tracing the Figure Museum of Contemporary Art, Los Angeles: 2/10/02 - 4/28/02 San Francisco Museum of Modern Art, San Francisco: 6/15/02 - 9/8/02 National Gallery of Art, Washington, D.C.: 9/29/02 - 1/5/03 Willem de Kooning (American, 1904-1997) Untitled (Two Figures), circa 1947 Oil, watercolor, charcoal, and graphite, 57.2 x 55.9 cm Fine Arts Museums of San Francisco, Museum Purchase, Gift of Mrs. Paul L. Wattis 1999.131
Stipulations:	The work of art will be accompanied by a FAMSF courier to Los Angeles and return from Washington, D.C. All related expenses will be paid by the requesting organization.

A motion was made and seconded. There was no discussion among Trustees or members of the public. The Board of Trustees voted unanimously to approve the two additional venues to the loan request.

B. Consideration and Possible Action to Adopt Notice and Appeal Procedures for Removal of Trees on Property under the Jurisdiction of the Fine Arts Museums of San Francisco Pursuant to Resolution 722-98 Approved by the Board of Supervisors Urging Departments to Adopt Such Policies and Procedures

Mr. Parker stated that the Board of Supervisors adopted Resolution 722-98 urging all departments to adopt notice and appeal procedures for removal of trees that are visible from the public right of way on property under the jurisdiction of the respective City agency, commission or department. He introduced the following resolution to adopt the appended Tree Removal Procedures Pursuant to Board of Supervisors' Resolution 722-98, which were distributed at the meeting:

WHEREAS, Pursuant to Section 5.101 of the San Francisco Charter, the Board of Trustees of the Fine Arts Museums of San Francisco (FAMSF) "…shall have exclusive charge of the trusts and all other assets under their jurisdiction, which may be acquired by loan, purchase, gift, devise, bequest or otherwise, including any land or buildings set aside for their use."; and

WHEREAS, The San Francisco Board of Supervisors adopted Resolution 722-98 urging all departments to adopt "notice and appeal procedures for removal of trees that are visible from the public right of way on property under the jurisdiction of the respective City agency, commission or department"; and

WHEREAS, Pursuant to Section 4.113 of the San Francisco Charter, the Recreation and Park Department is responsible for the maintenance of the lands under the jurisdiction of the Fine Arts Museums; and

WHEREAS, The Recreation and Park Department has responsibility for the maintenance and planning of both Golden Gate Park and Lincoln Park, and therefore must be able to make decisions that allow it to fulfill that responsibility, including to maintain the broader park landscape from disease, age, and other hazards, and to protect the safety of the public; and

WHEREAS, The FAMSF entered into a Memorandum of Understanding (MOU) with the Recreation and Park Department, which was approved by the FAMSF Executive Committee of the Board of Trustees on September 7, 2000 and the Recreation and Park Commission on September 20, 2000, that clarifies the working relationship of the two departments; now, therefore, be it

RESOLVED, That the Board of Trustees of FAMSF hereby adopts the attached Policy for Notice of Tree Removal made under its direction; and, be it

FURTHER RESOLVED, That the Policy shall not alter the FAMSF obligations under the MOU nor shall it affect the obligation of either the Recreation and Park Department or FAMSF under the San Francisco Charter; and, be it

FURTHER RESOLVED, That the Director of Museums is authorized to review public comment or appeal and render a decision regarding tree removal on the property of FAMSF.

A motion was made and seconded to adopt the resolution and appended Tree Removal Procedures Pursuant to Board of Supervisors' Resolution 722-98. There was no discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution and appended Tree Removal Procedures Pursuant to Board of Supervisors' Resolution 722-98 as **Board Resolution 1400.**

C. Consideration and Possible Action to Adopt a Resolution Acknowledging Funding Expended by the Corporation of The Fine Arts Museums During the Period July 1 through September 30, 2001

Mr. Parker advised that the City's Sunshine Ordinance requires the Fine Arts Museums to disclose the amount and source of all gifts received. He presented the following resolution, which acknowledges funding expended by the Corporation of The Fine Arts Museums for the period July 1 through September 30, 2001:

WHEREAS, The Corporation of The Fine Arts Museums is a 501(c)(3) not-for-profit corporation that exists to support the activities of the Fine Arts Museums of San Francisco and to serve as the developer of the New de Young Museum, and has a partial reimbursement contract with the Fine Arts Museums of San Francisco; now, therefore, be it

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby acknowledge with gratitude funding in the amount of $2,906,602 expended by the Corporation of The Fine Arts Museums for operations and $1,478,451 for the New de Young Museum in Golden Gate Park during the period July 1 through September 30, 2001.

A motion was made and seconded to adopt the resolution. There was no discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution as **Board Resolution 1401.**

D. Consideration and Possible Action to Adopt a Resolution Acknowledging a Bequest Received by the Fine Arts Museums of San Francisco for the Period July 1 through September 30, 2001

In accordance with the City's Sunshine Ordinance, bequests received by the Fine Arts Museums must also be disclosed. Mr. Parker introduced the following resolution

acknowledging a bequest received by the Museums for the period July 1 through September 30, 2001:

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby acknowledge with gratitude the following bequest received during the period July 1 through September 30, 2001:

Estate of Lester Hamilton, $17,920

A motion was made and seconded to adopt the resolution. There was no discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution as **Board Resolution 1402.**

E. Report on January 9-11, 2002 American Association of Museums Re-Accreditation Visit

The re-accreditation visit, originally scheduled for September 11-12, 2001, occurred on January 9-11, 2002. The members of the Re-Accreditation Visiting Committee were Henry Adams, Curator of American Art at the Cleveland Museum of Art, and Mimi Gates, Director of the Seattle Art Museum. Their visit included meetings with the officers of the Board, curators and key staff, and a tour of all the Museums' sites – the Interim de Young, de Young Art Center, Museum Warehouse, Post Street Administrative Offices, Legion of Honor, and the closed de Young Museum building. The re-accreditation report is expected in approximately six months. Mr. Parker advised that re-accreditation of the Museums is anticipated. However, the Visiting Committee did express concern over the impact of the number of off-site facilities on day-to-day operations. They recognized the unique circumstance of building the new de Young Museum on the same site as the old and the subsequent need for temporary, additional sites.

F. Update on the City Budget

Mr. Parker explained that the September 11, 2001 terrorist attacks, the decline in tourism in San Francisco, and the general economic recession have adversely affected Hotel Tax proceeds, which pay for the Museums' City budget. Budget cuts were proposed for all of the City's art and cultural departments supported by the Hotel Tax, including a $900k mid-year cut for the Museums. This budget cut will be covered by $600k in expense reductions and $300k from an interdepartmental loan from the War Memorial Commission. The source of War Memorial funds is a surplus of Hotel Tax funds built up for Opera House and Veterans' Building seismic work in 2007 to be repaid with no interest.

Expense reductions of $600 k include: a) freezing five vacant positions; b) deleting the $243k COFAM Education Program reimbursement; and c) reducing the utility bill by $75k by lowering temperatures and expanding humidity ranges, while still providing art conservation and people comfort conditions.

G. Consideration and Possible Action to Adopt a Resolution Authorizing the Board President and Director of Museums to Submit the Fiscal Year 2002-2003 City Budget Request

Mr. Parker presented the following resolution authorizing the Board President and the Director of Museums to submit the Fiscal Year 2002-03 City Budget Request:

RESOLVED, That the Board of Trustees of the Fine Arts Museums of San Francisco does hereby authorize the Board President and the Director of Museums to sign and submit the Fiscal Year 2002-2003 City Budget request for the Fine Arts Museums of San Francisco.

A motion was made and seconded to adopt the resolution. There was no discussion among Trustees. There was no public testimony. The Board of Trustees voted unanimously to adopt the above resolution as **Board Resolution 1403.**

H. Current and Future Exhibits

Mr. Parker reported that *Masterworks of New Guinea Art: Selections from the Marcia and John Friede Collection* has been installed in Gallery 6 at the Legion of Honor. It opens on February 6 and runs through May 2, 2002. The nineteen major objects featured in the exhibition were acquired for the New de Young Museum through the generosity of Marcia and John Friede and the Phyllis Wattis Purchase Fund.

At Mr. Parker's request, Krista Davis, Associate Curator for Exhibitions, discussed *Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum*, which opens tonight in Rosekrans Court and Galleries B-F. It runs through April 28, 2002. Over 200 works from sculpture and painting to film and photography, demonstrate the experimental nature of both the Dada and Surrealism movements as artists drew upon such devices as dream imagery, unconscious writing, found objects, humor, parody, and collage to attack traditional notions of art. Among the many artists represented are Marcel Duchamp, Man Ray, René Magritte, Max Ernst, Joan Miró, Kay Sage, Francis Picabia, Dorothea Tanning, and Salvador Dali.

Trustees were encouraged to attend the opening of *Dada and Surrealist Art* and to view *Masterworks of New Guinea Art* immediately following the conclusion of the meeting.

VI. Public Comment

Members of the public may address the Board of Trustees on items not on the agenda that are within the subject matter jurisdiction of the Fine Arts Museums of San Francisco. Speakers may address the Board for up to three minutes; the President or the Board of Trustees may limit the total comment to thirty minutes. There was no public comment.

VII. Meeting Schedule, Future Events and Current and Future Exhibits

A. Executive Committee Meetings

Date	Time	Location
February 14, 2002	noon	6th Floor, 233 Post Street **CANCELED**
March 14, 2002	noon	6th Floor, 233 Post Street
May 9, 2002	noon	6th Floor, 233 Post Street
September 12, 2002	noon	6th Floor, 233 Post Street
November 14, 2002	noon	6th Floor, 233 Post Street
December 12, 2002	noon	6th Floor, 233 Post Street

B. Board of Trustees Meetings

Date	Time	Location
January 31, 2002[1]	3 p.m.	Board Room, Legion of Honor
April 11, 2002	3 p.m.	Board Room, Legion of Honor
June 13, 2002	3 p.m.	Board Room, Legion of Honor
October 10, 2002	3 p.m.	Board Room, Legion of Honor

C. Future Events

Date	Event
January 31, 2002	Opening of *Dreaming with Open Eyes: The Vera, Silvia, and Arturo Schwarz Collection of Dada and Surrealist Art in the Israel Museum*
February 6, 2002	Opening of *Masterworks of New GuineaArt: Selections from The Marcia and John Friede Collection*
February 7, 2002	Tribal Arts Show Benefit
March 2-9, 2002	Museum Associates Trip to the Netherlands
March 11-15, 2002	Bouquets to Art
May 15-19, 2002	New de Young Museum Groundbreaking Events
June 13, 2002	Opening of *Michael Sweerts: Traveling Artist of the 17th Century*

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[1] Change in meeting date from January 10, 2002 to January 31, 2002 .

D. Current and Future Exhibitions (*Exhibitions organized by FAMSF)

Title	Date	Museum/Gallery
Triumph of Fortitude and Triumph of Prudence	02/10/01-02/24/02	Legion 2/3
Recent Acquisitions of Contemporary California Works on Paper*	10/27/01-02/24/02	Legion 1
Richard Diebenkorn: Clubs and Spades*	01/19/02-04/28/02	Legion A
A toute épreuve: An Artists Book Masterpiece by Joan Miró	01/26/02-05/19/02	Legion L
Masterworks of New Guinea Art: Selections from The Marcia and John Friede Collection*	02/02/02-04/28/02	Legion 6
Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum, Jerusalem	02/02/02-04/28/02	Legion B-F Rosekrans
Bouquets to Art	03/12/02-03/15/02	Legion All
Recent Acquisitions of Contemporary Works on Paper, Part II: Everywhere but California*	03/09/02-06/23/02	Legion 1
Logan Book Gallery	05/25/02-09/15/02	Legion L
Michael Sweerts: Traveling Artist of the 17th Century*	06/1502-08/25/02	Legion 6
Eternal Egypt: Masterworks of Ancient Art from The British Museum	08/10/02-11/03/02	Legion A-F, Rosekrans, 10
Philip Guston*	10/12/02-01/00/03	Legion 1
Hard Edge: Abstract Prints from Albers to Held*	11/30/02-03/23/03	Legion A
Casting a Spell: Winslow Homer, Artist And Angler*	12/07/02-02/09/03	Legion B-F, Rosekrans
Leonardo da Vinci and The Splendor of Poland	03/11/03-03/14/03	Legion B-F, Rosekrans

VIII. Adjournment in Memory of Trustee Emeritus John N. Rosekrans, Jr., and Trustee Emeritus Alfred S. Wilsey – Diane B. Wilsey, President

Mr. Parker stated that the meeting was being adjourned in memory of two of the Museums' most extraordinary Trustees. Trustee Emeritus John N. Rosekrans, Jr., passed away in Paris at the end of October 2001, and his memorial service was fittingly held in the Adolph B. and Alma de Bretteville Spreckels Gallery at the Legion of Honor on November 5, 2001.

Trustee Emeritus Albert S. Wilsey passed away on January 4, 2002. At the time of his death, he was a Trustee of The Fine Arts Museums Foundation, having previously served on the Board of Trustees of the Fine Arts Museums since 1981. On behalf of the Board of Trustees, Mr. Parker expressed heartfelt condolences to President Wilsey.

There being no further business, President Wilsey adjourned the meeting at 4:35 p.m. in memory of Trustee Emeritus John N. Rosekrans, Jr., and Trustee Emeritus Alfred S. Wilsey.

Respectfully submitted,

Judy Gough
Executive Secretary

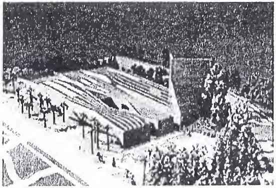
Note: These minutes set forth all actions taken up by the Board of Trustees on matters stated, but not necessarily in the order in which the matters were considered.

mbtfamsf021

Appendix I

THE NEW DE YOUNG MUSEUM

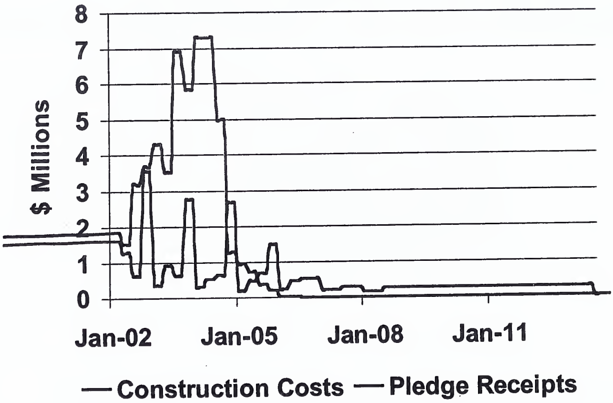
Fine Arts Museums Board of Trustees
Finance Workshop



January 31, 2002

Financing Purpose

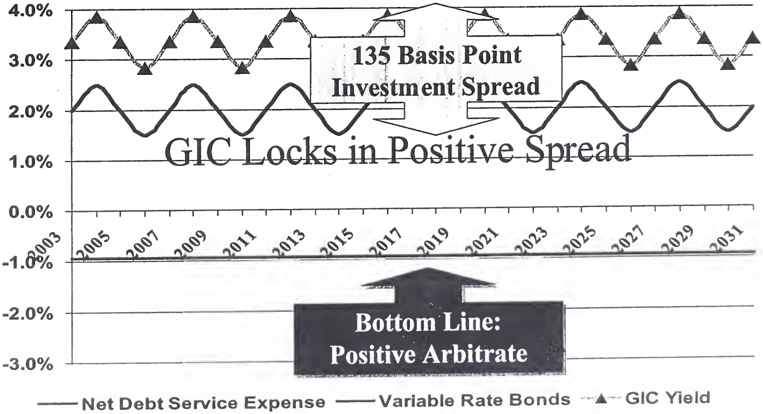
- Leverage Strong Capital Campaign - i.e., bridge loan



- $165 Million Pledge Campaign
- $185 Million Construction Project

Financing Purpose, cont'd

- Maximize Legal Arbitrage on Invested Funds
  - takes advantage of low borrowing rates
  - leverage spread between tax-exempt and taxable rates



135 Basis Point Investment Spread

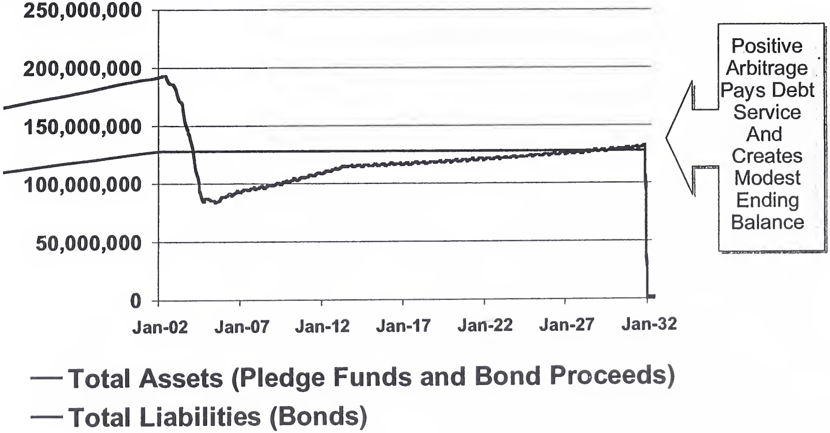
GIC Locks in Positive Spread

Bottom Line: Positive Arbitrate

Financing Purpose, cont'd

- lock-in earnings with Guaranteed Investment Contract (GIC)
- $~~77.8~~ 67.2 [Corrected at 1/31/02 FAM Board Meeting] million initial fund balance - Year 1
- $109.2 million fund balance - Year 10
- $120.6 million fund balance - Year 20
- $2.3 million fund balance - Year 30

Financing Purpose, cont'd



Positive Arbitrage Pays Debt Service And Creates Modest Ending Balance

- ✓ *Ending Balance of $2.1 million*
- ✓ *No Operating Subsidies Required*

Financing Proposal

1) Accumulate pledges in special fund removed from Bond Lien

2) Invest funds without IRS restriction

3) Apply funds to pay interest and principal on bonds

4) Issue tax-exempt bonds in short-term interest rate mode

5) Use bond proceeds to fund project expenditures

6) Redeem/defease bonds when New de Young fund balance equals amount owed (principal and interest) on bonds

Financing Proposal, cont'd

- Asian Art Museum
- Buck Foundation
- Catholic Healthcare West
- Delancy Street
- Elder Care Alliance of SF
- Episcopal Homes, Inc.
- J. Gladstone Institutes
- Golden Gate Council of American Youth Hostels
- Gough Street LLC
- Irwin Memorial Bloodbank
- KQED
- Marin Academy
- Public Policy Institute of California
- Ridgeview Terrace Affordable Hsg.
- Robinson Affordable Housing Inc.
- Sacred Heart Boys High School
- San Francisco International School
- San Francisco State Univ. Foundation
- San Francisco Symphony
- Santa Clara University
- United Way of Santa Clara
- University of San Francisco

Bond Structure: Long-term, tax-exempt

- Issued by the ABAG Finance Authority for Nonprofit Corporations (conduit issuer)
- Borrowers/Obligated Parties: Fine Arts Museums Foundation & the Corporation of Fine Arts Museums (qualified 501(c)(3)entities)
- Proposed Amount: $128,740,000* (70% lien-to-value)
- Stated Term: 30 years*
- Security Pledge: full faith and credit of Borrowers
  - excludes Restricted Assets (donations, grants, restricted endowment etc.)
  - excludes art collection
  - excludes new facility
- Repayment Source: New de Young Fund ; i.e., fundraising pledges and interest earnings thereon

* *Preliminary, subject to change*

Bond Structure: cont'd

Multi-modal: bond documents provide for 6 modes

- variable rate notes (daily or weekly, i.e., 1 to 7 days)
- auction rate securities (1 to 30 days)
- commercial paper (1 to 270 days)
- semi-fixed rate bonds
- fixed rate bonds (payable to maturity)

Initial Mode:

- Series A: 7-day Auction Rate Securities* offered by SSB
- Series B: 7-day Variable Rate Demand Notes* offered by BAS

Rating: Aaa/AAA/AAA based on bond insurance

Liquidity Facility: Line of credit for Series B Bonds

**Preliminary, subject to change*

Sources and Uses of Bond Funds*

	Total*
Sources:	
Par	$128,350,000.00
Total Sources	$128,350,000.00
Uses:	
Deposit to Construction Fund	$107,550,000.00
Cost of Issuance	500,000.00
Underwriters' Discount	385,050.00
Insurance Premium	2,108,148.75
Deposit to DSR	0.00
Capitalized Interest	17,804,350.37
Contingency	2,450.88
Total Uses	$128,350,000.00

**Preliminary, subject to change*

Financing Team - Internal

Diane B. Wilsey -	President, Board of Trustees and Capital Campaign Chair
Harry S. Parker III -	Director of Museums
Steve Dykes -	Deputy Director for Administration and Finance
Rob Cullison -	Controller
Michele Gutierrez -	Foundation Fiscal Officer
Barbara Boucke -	Deputy Director and Director of Development
Deborah Frieden -	Project Manager

Financing Team - External Professionals

City Representative -	Monique Moyer, Director of Public Finance, CCSF
Deputy City Attorneys:	Adine Varah, FAMF/COFAM Counsel Michael Cohen, Real Estate Theresa Alvarez, Debt
Bond Counsel -	William Madison, Esq., Jones Hall
Underwriter s Counsel -	Sean Tierney, Esq., Hawkins Delafield
Borrower Counsel -	Adam Sachs, Esq., Folger Levin & Kahn
Underwriters -	Nikolai J. Sklaroff and Ken Becker, Salomon Smith Barney Richard Chisholm, BancAmerica Securities
Trustee/Paying Agent:	solicitation in progress

Financing Team - External, cont'd

Auction Agent:	also the Trustee
Rating Agencies:	S&P Ratings Group & Fitch IBCA
Bond Insurers:	bids due Feb. 7, 2002
Liquidity Provider:	solicitation in progress
GIC Provider:	decision pending credit review of investment guidelines
Financial Printer:	to come
Arbitrage Rebate:	to come
Conduit Issuer:	Clark Howatt, ABAG Finance Authority for Non-Profit Corporations

Documentation Required

Resolutions:	of the Foundation, COFAM and ABAG with regard to issuance of the bonds of the City with regard to the TEFRA hearing
Bond Indenture:	between Trustee bank and ABAG on behalf of Borrower
Auction Agreement:	between Trustee & Auction Agent
Official Statements:	issued by ABAG on behalf of the Borrower
Liquidity Facility Agreement:	between ABAG & Provider on behalf of Borrower
Insurance Policy:	between Insurer and ABAG
Lease & Facilities Agreement:	between City and Foundation
Remarketing Agreement:	between BancAmerica Securities and ABAG on behalf of the Borrower

Timing & Critical Steps*

1/31/02	FAMF & COFAM Adoption of Required Resolutions
2/7/02	Bond insurance bids due
2/8/02	Application submitted to ABAG Finance Authority
2/11/02*	Introduction of items at Board of Supervisors
3/4/02*	Board of Supervisors Reading and Approval
3/5/02*	ABAG Finance Authority Hearing and Approval
3/12/02*	Bond Sale
3/14/02*	Bond Closing

*Preliminary, subject to change

Glossary of Terms

Auction Rate Securities (ARS):
short-term securities whose rates are reset on a periodic basis [in this case, every 7 days]. The rates are reset through an auction process (similar to that of US Treasury bills).

ARS have a long-term nominal maturity with interest rates reset at predetermined intervals, generally every 7 or 35 days [in this case, every 7 days]. The interest rate is reset through a dutch auction process whereby the current holders and prospective holders place bids through a broker-dealer. The broker-dealer then submits these bids to an auction agent, with the auction agent using the submitted bids to determine the market clearing rate on each interest reset date. Unlike VRDNs, the investor does not have the affirmative right to tender its securities for purchase. Instead, the ability of an ARS holder to liquidate its position is dependent upon the willingness of other bidders in the auction process to purchase the securities. As a result, a liquidity facility is not required.

A dutch auction is an auction system in which the price of an item is gradually lowered until it meets a responsive bid and is sold.

Conduit Issuer:
A governmental issuer [in this case, the ABAG Finance Authority for Non-Profits] issues debt obligations to finance a project to be used by a third party, usually a non-profit or a corporation. The security for such bonds is the borrowing entity, not the governmental issuer.

Conduit issuers in California consist of the ABAG Finance Authority for Non-Profits, the California Statewide Communities Development Authority, the California Infrastructure and Economic Development Bank and various local governments or JPAs. The City and County of San Francisco has the statutory authority to serve as a conduit issuer but has not done so for many years.

Glossary of Terms, Cont'd

Liquidity Facility:
a letter of credit or standby-purchase agreement [in this case, the latter] which provides cash to purchase VRDNs that are put back to the remarketing agent by investors on an interest reset date.

Tax-Exempt Securities:
securities for investment under which the investor has no tax liability. In this case, interest earnings on an investment in the New de Young bonds would not be taxable at either the federal or state levels.

Free from tax liability. This status is granted to most municipal bonds [including debt of 501(c)(3) entities], which pay interest that is totally free from federal taxes. Municipal bond interest is also usually tax-exempt to bondholders who are residents of the issuing state. However, other states may impose taxes on interest earned from out-of-state bonds. Certain organizations, such as registered charities, religious organizations, educational institutions, and nonprofit groups, also hold tax-exempt status, meaning they are exempt from federal, state, or local government taxes.

TEFRA:
Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
Federal legislation to raise tax revenue [to the Federal government], mainly through closing various loopholes and instituting tougher enforcement procedures.

TEFRA Hearing:
A public hearing that must be held by the sponsoring government agency [in this case, the City & County of San Francisco] prior to issuing private activity bonds [or bonds for qualified issuers, such as 501(c)(3)entities].

Glossary of Terms, Cont'd

Variable Rate Demand Notes (VRDNs):
short-term securities whose rates are reset on a periodic basis [in this case, every 7 days]. The rates are reset by a remarketing agent based on market conditions.

VRDNs have a long-term nominal maturity and bear interest at a floating rate determined periodically by a remarketing agent. On each adjustment date [in this case, every Wednesday], the remarketing agent [BancAmerica Securities] resets the rate to be the minimum rate necessary, in its judgement, to price the securities at par. A VRDN holder has the right to tender (put) the securities for purchase with advance notice.

In the event of a tender, the remarketing agent will repurchase the VRDNs and simultaneously place them with new holders or draw cash from the liquidity facility to repurchase them until new holders can be found. However, under the remarketing agreement for the New de Young, the remarketing agent must warehouse the VRDNs (and seek new buyers) for 30 days prior to making a draw on the liquidity facility.

EXECUTIVE SUMMARY OF
LEASE AND FACILITIES AGREEMENT
FOR NEW M.H. DE YOUNG MUSEUM

1. Overview. The purpose of this lease is to enhance the creditworthiness of the bonds. To the greatest extent possible, the lease avoids trying to re-characterize or re-define the roles or responsibilities of the FAM under the Charter or the Administrative Code. Instead, those laws are simply incorporated by reference so that if they are amended at a later date, those changes will occur automatically without having to amend the lease itself.

The lease codifies FAM's relationship with the Foundation (for at least the term of the bonds) and preserves for FAM maximum flexibility in making future decisions regarding the Museum while still achieving the underlying goal of enhancing the creditworthiness of the bonds. Furthermore, in recognition of the Tenant's charitable function, it also shields the Foundation from open-ended financial and legal liabilities. In this regard, the lease in many respects operates more like a management agreement (with the Foundation managing the City's asset pursuant to the City's direction) than a lease (where the City would normally transfer most of the control and the financial obligations and liabilities to the Foundation).

In light of the forgoing and to preserve in FAM the flexibility to define the respective roles and responsibilities of the City and the Foundation for the use and operation of the new Museum for the next 35 years, the lease sets forth processes for allocating rights and responsibilities instead of attempting to specifically allocate those rights and responsibilities in the lease itself. The key element of that process-oriented approach is a requirement that FAM approve each year a management plan governing the use and operation of the Museum.

2. Term. The term of the lease is coterminous with the term of the debt, up to a maximum of thirty five years, subject to earlier termination either in the event of an uncured default or if the new Museum has not been built by some (as yet to be determined) outside completion date.

3. Rent. None. General admission revenues continue to be collected, received and distributed in accordance with the City's Administrative Code. The Foundation retains all excess general admission revenues distributed to the Foundation under the Administrative Code and all non-general admission revenues, provided they are expended on either (i) debt service or other costs related to the bonds or (ii) to support FAM in its programs (including at the de Young and the Legion of Honor).

4. Negative Pledge. The principal way in which the lease enhances the creditworthiness of the bonds is through a negative pledge, which imposes a strict limitation on FAM's ability to encumber or otherwise dispose of the premises during the term of the lease. Specifically, the lease prohibits FAM from creating any new encumbrance on the premises, without the prior written consent of the Foundation and limits FAM's ability to sell or otherwise dispose of a material portion of the premises.

5. Permitted Use; Maintenance and Operations. The lease also guarantees the Foundation's participation in the Museum for the life of the bonds. The lease requires the premises to be used as a public museum and for related ancillary uses approved by FAM in any annual Management Plan. Rates and charges remain the jurisdiction of FAM as set forth in the City's Charter and Administrative Code. The relative rights and responsibilities of the City and the Foundation for maintenance and operation of the Museum shall be set forth in each year's Management Plan.

6. Construction. The lease does not govern construction of the new project or address issues related to accessing the site for construction, construction schedules and standards, performance guarantees etc. Rather, the lease only addresses operation of the new Museum after it is built. Thus, although the lease would be signed and become effective as soon as it is finally approved, the lease term would not commence until the new Museum is "substantially complete". For this purpose, issuance of a temporary certificate of occupancy would evidence "substantial completion". Subsequent construction or material alterations require prior FAM approval.

7. Assignment. The Foundation is free, under the lease, to exercise its reasonable business judgment to enter into contracts with third-parties to provide services to the Museum, consistent with any approved Management Plan. Subject to the prior approval of FAM's Director, the Foundation may assign or sublet its actual rights and

responsibilities under the lease to third parties, including COFAM. Assignment or transfer of the entire lease is subject to the prior approval of the FAM Director and the full Commission.

PRIVILEGED AND CONFIDENTIAL
DRAFT FOR DISCUSSION PURPOSES ONLY
January 24, 2002~~January 24, 2002~~

LEASE AND FACILITIES AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its
BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO
as Landlord

and

FINE ARTS MUSEUMS FOUNDATION
as Tenant

For the lease of

_____ ± acres and improvements thereon located in
San Francisco, California

____________________, 2002

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PRIVILEGED AND CONFIDENTIAL
DRAFT FOR DISCUSSION PURPOSES ONLY
January 24, 2002~~January 24, 2002~~

LEASE AND FACILITIES AGREEMENT

THIS LEASE AND FACILITIES AGREEMENT (this "Lease") dated to be effective as of **[March 1, 2002]**, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO (the "Commission") (collectively, "City" or "Landlord"), and the FINE ARTS MUSEUMS FOUNDATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The Commission is a commission of the City, organized and operating under the provisions of Article V of the 1996 Charter of the City and County of San Francisco (the "Charter").

B. The Commission is responsible under Charter Section 5.105 for the protection and conservation of the assets of M.H. deYoung Memorial Museum (the "Museum") and the California Palace of the Legion of Honor (the "Legion"). The Museum is not currently in operation, and any continued operation of the existing museum facilities is not feasible, primarily because of concerns regarding the ability of such facilities to withstand certain seismic events.

C. The Tenant's mission is to support the activities of the Commission. In furtherance of such mission, the Tenant manages an endowment (the "Endowment") for the enrichment and benefit of the Commission, and plays a critical role in helping to defray the Commission's costs of operating the Museum and in raising the level of private contributions and developing Museum membership.

D. The City owns certain real property located in Golden Gate Park, San Francisco, California, a portion of which contains the Museum and other related buildings, improvements or areas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (collectively, the "Premises"). The Premises are under the jurisdiction of the Commission.

E. Pursuant to Charter Section 5.101, the Commission has exclusive charge of the assets under its jurisdiction, including the Premises and any other land or buildings set aside for its use, and has the authority to maintain, operate, manage, repair or construct new buildings, and to make and enter into contracts relating thereto, subject insofar as City funds are to be used, to the budgetary and fiscal provisions of the Charter.

F. The building of a new M.H. de Young Memorial Museum in Golden Gate Park is the highest institutional priority for the Commission and the Tenant. Accordingly, on _____________ the Commission approved of the construction of a new museum facility and related improvements for the Commission, to be located on the Premises (collectively, the "Project"). The Project will consist of (i) the construction of the new museum facility, and (ii) the planned new museum facility as completed. The plan of construction for the Project includes demolition of the existing Museum and construction of an approximately 300,000 square foot new museum facility. The new museum facility includes gallery space, a main lobby, courtyard, educational spaces, inner courtyards, café, museum store, observation tower area, curatorial and museum administration offices, a loading dock, art storage and conservation space, and other museum-related uses. The Commission does not have funding to permit the Commission to perform seismic retrofitting of the Museum or to construct the Project. Tenant and the Corporation of the Fine Arts Museums ("COFAM") have offered to accept primary responsibility for constructing the Project, which, when completed, will be the new M.H. deYoung Memorial Museum. Upon completion of the Project, the Tenant shall give to the City the completed Project, including without limitation any Improvements located on the Premises, subject to any necessary approvals required by applicable Laws.

G. The Tenant and COFAM have raised at least $150,000,000 in completed and pledged gifts (the "Philanthropic Funds") in support of the design and construction costs of the Project, including development, administrative and other soft costs related thereto (the "Project Costs"), and are committed to a fund raising goal of $165,000,000.

H. In addition to raising Philanthropic Funds, the Tenant and COFAM will cause bonds to be issued initially in an amount not to exceed $185,000,000 (the "Bonds") in order to finance a portion of the Project Costs.

I. In furtherance of the Tenant's financing of a substantial portion of the Project Costs, the City and Tenant have negotiated and agreed upon the terms and conditions upon which City will lease the Premises to Tenant, and the Parties now desire to enter into this Lease upon all of the terms and conditions hereof.

J. All initially capitalized terms used herein are defined in Appendix A attached hereto or shall have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section 1 and any more specific provision of this Lease, the more specific provision shall control.

Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its BOARD OF TRUSTEES OF THE FINE ARTS MUSEUMS OF SAN FRANCISCO
Tenant:	FINE ARTS MUSEUMS FOUNDATION, a

	California nonprofit public benefit corporation
Premises (Section 3.1):	That certain land located in the City and County of San Francisco, California, more particularly described in Exhibit A-1 attached hereto and shown on the map attached hereto as Exhibit A-2, together with all Improvements now or hereafter located thereon, including the Project.
Term (Section 4):	The Lease shall commence upon the Completion (as defined below) of the Project (the "Commencement Date") and shall expire as of the earlier of: (a) thirty-five (35) years from the Commencement Date, (b) the date as of which any indebtedness and all other amounts due under the Indenture shall have been paid or provision for their payment shall have been made in accordance with said Indenture, or (c) the date as of which this Lease terminates in accordance with the terms of this Lease.
Use (Section 8):	The Premises shall be used as a Museum open to the public in accordance with the terms and conditions of this Lease and applicable Laws.
Notice Address of City (Section 30.1):	Board of Trustees of the Fine Arts Museums of San Francisco 233 Post Street, 6th Floor San Francisco, CA 94108-5003 Attn: Harry S. Parker, III Director of Museums Fax No.: (415) 750-7686
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Team Leader, Real Estate, Finance and Special Projects Team Fax No.: (415) 554-4755
and to:	Office of the Controller City Hall, Room 316 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682

	Attn: Controller Fax No.: (415) 554-7466
and to:	Office of Public Finance City Hall, Room 336 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Director Fax No.: (415) 554-4864
Key Contact for City:	Director of Museums
Telephone No.:	(415) 750-3661
Alternate Contact for Landlord:	Deputy Director for Administration and Finance
Telephone No.:	(415) 750-3666
Notice Address of Tenant (Section 30.1):	Fine Arts Museums Foundation 233 Post Street, 6th Floor San Francisco, CA 94108
Key Contact for Tenant:	President of Tenant
Telephone No.:	(415) 750-3682
Alternate Contact for Tenant:	Secretary of Tenant
Telephone No.:	(415) 750-3682
Brokers (Section 30.9):	None.

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in Appendix A attached hereto and incorporated herein by reference.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the Premises, together with any and all Improvements existing thereon, including the Project, all of which shall be owned by City, and all easements and appurtenant rights to the Premises; excluding therefrom and reserving unto City, its successors and assigns, the Reserved Rights relating to the Premises as described in Appendix A attached hereto and incorporated herein by reference.

3.2 Reserved .

3.3 As Is Condition of Premises.

(a) Inspection of Premises. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises, including, without limitation, (i) the quality, nature, adequacy and physical condition of the Premises, and all other physical and functional aspects of the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Premises (including Hazardous Materials conditions); (iii) the suitability of the Premises for the Project; (iv) the zoning, land use regulations and other Laws governing use of or construction on the Premises; and (v) all other matters of material significance affecting the Premises and uses thereof under this Lease. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises are being leased by City to Tenant, and Tenant hereby accepts the Premises are being leased by City to Tenant, and Tenant hereby accepts the Premises in their existing state and condition, "AS IS, WITH ALL FAULTS" and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Tenant acknowledges and agrees that neither City. the Commission nor any of the other Indemnified Parties, nor any Agent of any of them, has made, and there is hereby disclaimed, any representation or warranty, express or implied, of any kind by Tenant with respect to the condition of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, leases, and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature of adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials, in, on, under, above or about the Premises, (including, but not limited to, soils and groundwater conditions) or the physical condition of the new Museum once the Project is complete, (ii) any Laws applicable thereto, including, without limitation, Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant's Initials: _____

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the Commencement Date as defined below. The Term of this Lease shall end on the Expiration Date defined below, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date. The Term of this Lease shall commence on the first day of the first full month following the date of Completion of the Project (the "Commencement Date"). The "Expiration Date" shall be the earlier to occur of: (i) the date thirty-five (35) years from the Commencement Date, (ii) the date as of which any indebtedness and all other amounts due under the Indenture shall have been paid or provision for their payment shall have been made in accordance with said Indenture, or (iii) the date as of which this Lease is terminated pursuant to the provisions hereof. Tenant shall execute and deliver to City a memorandum confirming the Commencement Date substantially in the form attached hereto as Exhibit D, but Tenant's failure to do so shall not affect the commencement of the Term.

4.3 Effective Date. This Lease shall become effective on the later of (i) the date the City, in its sole and absolute discretion, approves this Lease, in accordance with all applicable Laws, and (ii) the date on which the Parties hereto have executed and delivered this Lease (the "Effective Date").

5. BOND ISSUANCE

5.1 Bond Issuance. The parties anticipate that the Bonds shall be issued on behalf of the Tenant for the purpose of financing or refinancing the Project, pursuant to the terms and conditions of a trust Indenture and other Bond Documents related to, evidencing or securing the Bonds. The Tenant covenants that it shall use Bond proceeds only to finance the construction or Completion of the Project and for any other purpose identified in the Bond Documents, including the refinancing thereof.

5.2 Consent of City to Issuance of Bonds. The City hereby consents to the issuance of the Bonds, subject to the terms and conditions of this Lease and the Bond Documents; provided, however, in no event shall this Lease or any of the Bond Documents create a debt of the Commission or the City, and nothing in the foregoing shall make or cause the Commission or the City to be liable for payment of debt service or other obligations of the Bonds; and provided, further however, such consent by the City shall not be deemed to be the approval by City of the Bonds or Bond Documents, and City offers no opinion related to the issuance of the Bonds and Bond Documents. Tenant agrees that a statement to such effect shall be printed on the Bonds.

5.3 Notification to Commission (with copies to City). The Tenant shall: (i) promptly provide to the Commission copies (with additional copies as proscribed by Section 1 above) of all prospecti and other offering materials relating to the Bonds, and copies of any annual or other disclosure statements relating to the Bonds; (ii) provide written notice to the Commission (with additional copies as prescribed by Section 1 above) within two (2) days of all default notices under the Indenture, Loan Agreement or any of the Bond Documents, or any other agreement for credit enhancement or liquidity for the Bonds; and (iii) provide written notice to the Commission (with additional copies as proscribed by Section 1 above) within two (2) days of any action the Tenant takes that might jeopardize the Tenant's legal status under Section 501(c)(3) of the United States Internal Revenue Code of 1986 (as amended, the "Code"), or any notices the Tenant might receive threatening revocation of its 501(c)(3) status or imposition of any intermediate sanctions.

5.4 Tax-Exempt Status of Bonds. The Commission shall not take or permit any action that would adversely affect the exclusion from gross income of interest on the Bonds pursuant to Section 103 of the Code.

5.5 Right of Termination. In the event that the Bonds are not issued on behalf of the Tenant on or before ____________________, 20__(the "Outside Bonds Issuance Date"), or construction of the Project is not completed on or before ____________________, 20__(the "Outside Project Completion Date"), the parties acknowledge and agree that the Commission shall have the right, at its election in its sole and absolute discretion, to (a) terminate this Lease by providing written notice thereof to Tenant, with such termination to be effective as of the date set forth in such termination notice, or (b) to extend the Outside Bonds Issuance Date or Outside Project Completion Date, as applicable. In the event of such termination, the Lease shall be of no further force and effect as of the termination date set forth in such notice, except for obligations which specifically survive the termination of the Lease.

5.6 Limitation on Encumbrances and Disposition of the Premises. During the Term of this Lease, the Commission shall not create any Encumbrance upon the Premises, except Permitted Encumbrances, without the prior written consent of Tenant. The Commission further agrees that it will not sell or otherwise dispose of any material part of the Premises unless the sale or other disposition thereof will not materially, adversely impair the structural soundness of the Premises or the revenue generating capacity of the Tenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) No Tax Liens. Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same.

(b) Reporting Requirement. Tenant agrees to provide such information as City may reasonably request to enable City to comply with any tax reporting requirements applicable to this Lease.

[CONFIRM WITH ASSESSOR RE: APPLICABILITY OF POSSESSORY INTEREST TAX]

7. TENANT'S PERSONAL PROPERTY

7.1 Tenant's Personal Property. All of Tenant's Personal Property shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 25 [Surrender] hereof; provided, however, Tenant acknowledges and agrees that Tenant's Personal Property specifically shall exclude all of the City's Personal Property. All of Tenant's Personal Property shall be removed by Tenant on or prior to the date of termination of this Lease or of any extension thereof. Prior to the commencement of operation, a list of trade fixtures to be included in Tenant's Personal Property shall be submitted in writing to City by Tenant.

8. USES

8.1 Permitted Uses.

(a) Museum. Subject to the terms and conditions of this Lease, the Premises shall be operated continuously for the benefit of the public as a public museum facility, including the ancillary uses set forth in Section 8.1(b) such as space for retail, office and maintenance functions related to the use and operation of the Museum, according to rules and regulations, rates, charges and hours of operation as may be established by the Commission from time to time.

(b) Management Plan. Tenant may use the Premises only to the extent set forth in any annual Management Plan (as defined in Section 9.1(a) below), and for no other purpose and in no other manner. The parties expect that each annual Management Plan shall authorize Tenant to perform functions related to the Museum that it and other non-profit corporations have historically performed for the Museum, including the following: (i) operating museum retail stores and other related activities, including without limitation, on-line merchandising activities, (ii) operating food and beverage service facilities, (iii) displaying the permanent collection of the Museum, (iv) providing curator services and publications related to the Museum, (v) sponsoring and presenting special exhibitions, events, lectures, cultural and educational programs relevant to the Museum's charitable purposes, (vi) hosting fundraising events, (vii) granting individuals and entities permission to use portions of the Premises for private events or functions on a short-term basis upon terms and conditions consistent with the City's standard form of permit, (viii) providing art conservation services for the City's permanent art collection and to institutions and members of the public, (ix) raising contributions and developing membership for the support of the Museum, (x) generating and collecting fee income from reproduction rights to images in the Museum's art collection, (xi) collecting special exhibition admission surcharges, (xii) occupying space for retail, office and maintenance functions related to the use and operation of the Museum, (xiii) providing administrative and marketing services for the Museum, (xiv) managing the Endowment, (xv) management of certain restricted funds, (xvi) purchasing art acquisitions, and (xvi) engaging in such other revenue-generating activities as may be approved by the Commission from time to time, in its sole and absolute discretion. The parties further expect that each annual Management Plan shall specify functions and services to be provided by the City, subject to annual appropriations and applicable Laws, consistent with such services as the City has historically performed for the Museum, including the following: (i) providing guard services, (ii) providing custodial services, (iii) performing maintenance on the Premises, including without limitation, providing stationery engineers and facility maintenance, (iv) providing utility services to the Premises, and (v) maintaining insurance for the City's art collection.

Except as expressly set forth in this Lease, all of the Tenant's activities in the Premises shall be subject to the approval of the Director or his or her designee, and such rules and regulations as may be imposed by the Commission from time to time. All revenues generated from such activities shall be governed by Section 10, below.

(c) Retail Operations; Facility Rentals. With respect to the operation of museum retail stores and other related retail activities, fundraising events and short-term facility rentals at the Premises approved by the Commission in any annual Management Plan, the parties agree as follows: (i) the Tenant will conform with customary museum practices and will consult with the Director with respect to content, style, price and aesthetic value, (ii) the Tenant will give the greatest consideration to the views of the Director and will comply with reasonable rules and conditions established by the Director, and (iii) the Tenant's activities will not conflict or interfere with other activities in the Premises. The Commission agrees that it shall cooperate with and assist the Tenant in carrying out these activities consistent with the Commission's cooperation and assistance to date, and the Commission shall not take any action that would materially impair these Tenant activities or the ability of the Tenant to generate revenue in connection with such activities.

(d) Commission Authority Over Facilities and Commission Operations. Notwithstanding anything to the contrary contained herein, the content, style, price and aesthetic value of all exhibitions, educational and cultural lectures and programs must be approved in advance by the Director and shall be subject to the jurisdiction of the Commission. The Commission, through its Director, shall continue to have authority to develop and administer the Museum and Premises, including its collections, facilities programs, activities and other operations, as set forth under Charter Section 5.100-5.102, and 5.105 and Administrative Code Sections 2A.155-2A.155.10, as such Laws may be amended from time to time. Nothing in this Lease shall be interpreted as interfering with or diminishing the Director's or Commission's authority to manage and control such collections, programs, activities and operations under such laws. Except as otherwise expressly set forth in this Lease, all of the Tenant's activities in the Premises shall be subject to the approval of the Commission or the Director or his/her designee, and such rules and regulations as may be imposed from time to time by the Commission or the Director. Subject to Section 8.1 hereof, nothing in this Lease shall be interpreted to interfere with or diminish the Director's and Commission's exclusive authority to determine the form and content of Museum programs and activities, nor shall anything in this Lease be interpreted to interfere with the terms and conditions of any gifts accepted by the Commission.

(e) Rates, Charges, Rules and Regulations. In accordance with the Administrative Code and Charter, the Commission may from time to time establish and thereafter modify all rates and charges for admission to the Museum and Premises, including base general admission fees and special exhibition surcharges, and reasonable rules and regulations for the use and operation of the Premises, including, without limitation, the hours and days of operation, restrictions on use, and the public uses and purposes permissible on or in the Premises. Tenant will comply with said rates, charges and rules and regulations.

(f) Commission Covenants.

(i) The Commission covenants and agrees that it shall not take or permit any action that would adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

(ii) The Commission covenants to enforce its rights to receive revenues in accordance with the current provisions of applicable Laws. The Commission shall take all reasonable actions and remedies to ensure that such revenues are promptly received by the Commission as provided by such Laws.

(g) No Change to Charter. Nothing contained in this Section 8.1 shall be construed to amend, alter or modify any obligations of the Parties under the Charter or any other applicable Law, including the City's Administrative Code. In the event of any conflict between the terms of this Lease and the Charter or Administrative Code, the terms of the Charter or Administrative Code, as applicable, shall govern. The Lease shall not provide to the Tenant a contractual right or remedy to enforce City obligations under the Charter.

8.2 Advertising and Signs. Tenant shall not allow the placement, construction or maintenance of any sign, advertisement, awning, canopy, banner or other exterior decoration of or on the Premises without obtaining the Commission's prior written consent. Any sign that Tenant or its subtenants are permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including, but not limited to, City's Sign Guidelines and all building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. City makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant at its sole cost and expense, and at the Commission's request, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

8.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Without limiting the generality of Section 8.1 [Permitted Uses] above, Tenant shall not conduct or permit on the Premises any Prohibited Activities (as defined in Appendix A attached hereto) without the prior written consent of the Commission:

8.4 Museum Name; Use of Marks. Except as specifically provided below, Tenant shall use the name "M.H. deYoung Memorial Museum" as the name of the museum facilities located on the Premises. Any other reference to or naming of the Museum, in connection with advertising or promotional materials or otherwise, shall require the prior consent of both the Commission and Tenant. Without limiting the foregoing, neither Party may use the logos, trademarks, trade names, emblems, insignia, slogans, or commercial symbols (collectively "Marks") of the other Party without the other Party's prior written consent. For purposes herein, the City's Marks shall include the Seal of the City and the names "The Fine Arts Museums of San Francisco", and Tenant's marks shall include the names "The Fine Arts Museums Foundation". Upon the Expiration Date or any earlier termination of this Lease, Tenant shall have no further rights to any use of the City Marks that may have been approved during the Term of this Lease and City shall have no right to any use of Tenant's Marks that may have been approved during the Term of this Lease.

8.5 Covenant to Protect Park Facilities. At all times during the Term of this Lease, Tenant shall perform its management and operation obligations in a manner that does not cause any damage to the Park Facilities. If Tenant or any of its Agents materially damages, injures or disturbs, or if Tenant has actual knowledge of any of Tenant's Invitees materially damaging, injuring or disturbing, any of the Park Facilities, or any portion of the Park Facilities, Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all reasonable actions it reasonably deems proper to repair such Park Facilities damaged, injured or disturbed by Tenant or its Agents at Tenant's sole expense.

8.6 Trespassing. As far as reasonably possible given the Parties' respective obligations hereunder by the exercise at all times of reasonable diligence and care, Tenant shall protect the Premises from trespass during operating hours.

9. OPERATION AND CONDITION OF PREMISES

9.1 Tenant's Operation, Maintenance and Repair Obligations.

(a) Management Plan. On an annual basis, the Tenant shall prepare a management plan (the "Management Plan") for the approval of the Commission. The Management Plan shall address the responsibilities and obligations of the Parties with respect to the operation, use and management of the Museum, including without limitation, the obligations and standards of performance for the following: (i) security services for the Premises, including the art collection displayed and stored therein, (ii) janitorial services, (iii) maintenance of the Premises, including capital expenditures, engineering and custodial staff, (iv) collections of admissions revenues, (v) utilities, (vi) groundskeeping services, (vii) funding of various professional and staff positions, (viii) retail services and activities, (ix) food and beverage services, (x) special exhibitions, events, lectures, cultural and educational programs, (xi) fundraising events, (xii) permits to use portions of the Premises for private events or functions on a short-term basis, (xiii) curatorial and art conservation services, (xiv) raising contributions and developing membership for the support of the Museum, (viii) generating and collecting fee income from reproduction rights to images in the Museum's art collection, (ix) collecting special exhibition admission surcharges, (x) occupancy of limited space for retail, office and maintenance functions related to the use and operation of the Museum, and (xi) such other revenue-generating activities as may be approved by the Commission (collectively, the "Annual Management Responsibilities").

At least sixty (60) days prior to the Commencement Date of the Term, Tenant covenants to submit to the Commission for approval, a proposed Management Plan for the initial period from the Commencement Date of the Lease to and including the 30th day of June, and annually thereafter a proposed Management Plan for each succeeding fiscal year or portion thereof during the Term of this Lease. The Management Plan shall set forth in reasonable detail the contemplated responsibilities and obligations of Tenant with respect to the Annual Management Responsibilities. The Director shall review the proposed Management Plan and make such changes or recommendations with respect thereto as it may deem advisable and deliver a copy thereof to the Tenant. Each such Management Plan shall be changed to conform to any such changes or recommendations, if any, of the Director. Thereafter, upon approval by the Commission, the initial Management Plan, and each annual Management Plan thereafter, shall be the operative Management Plan for the corresponding fiscal year.

(b) Operating Standards. Subject to the terms and conditions of any applicable Management Plan, each Party hereto shall perform its respective obligations thereunder with respect to the Premises, in a first-class manner and, in connection therewith, shall provide the public with good quality products and efficient and courteous service.

(c) No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense because of City's failure to keep the Premises (including, without limitation, streets and other infrastructure within the Premises) or any adjoining property or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from rent.

10. FISCAL DUTIES AND MATTERS

10.1 General Admission Revenues.

(a) San Francisco Museums Admission Special Revenue Fund. All general admission fees, as more particularly described in Section 10.100-307 of the Administrative Code, which are collected or received by the Tenant ("General Admission Revenues") shall be deposited in the Museums Admission Special Revenue Fund ("Special Revenue Fund") pursuant to Section 10.100-307 of the Administrative Code. Any excess proceeds ("Excess General Admission Revenues") from the Special Revenue Fund shall be disbursed in accordance with Section 10.100-307 of the Administrative Code and any other applicable Law, as such may be amended from time to time.

(b) Non-General Admission Revenues. All Non-General Admission Revenues generated from Tenant's activities under this Lease shall, subject to Section 10.2, below, be the property of Tenant.

10.2 Excess General Admission Revenues and Non-General Admission Revenues. In the event any Excess General Admission Revenues are distributed to the Tenant from time to time under applicable Law, and to the extent Tenant receives any Non-General Admission Revenues, the Tenant covenants that all such Excess General Admission Revenues and any Non-General Admission Revenues shall be used only to either (i) pay debt service and other costs associated with the Bonds, or (ii) support the Commission and its programs and purposes (including without limitation programs and purposes related to the Legion of Honor), and for no other purpose whatsoever. Notwithstanding anything to the contrary contained herein, this Lease shall not create a debt of the Commission or the City, and nothing contained herein shall make or cause the Commission or the City to be liable for payment of debt service on the Bonds, and the Tenant covenants that a statement to such effect shall be printed on the Bonds.

10.3 Patron Audit Program. Tenant shall participate in City's Patron Audit Program whereby signs provided by the City will be clearly posted at each point of sale stating that receipts are to be offered for each purchase and that if a receipt is not offered, the patron shall be allowed some form of compensation as mutually agreed upon by City and Tenant.

10.4 Books and Records. Tenant shall keep accurate books and records according to generally accepted accounting principles consistently applied. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules, relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises, including the reports described in Section 10.4 above. If Tenant operates all or any portion of the Premises through a subtenant or Agent, Tenant shall require such subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

10.5 Inspection and Audit. City, or any City auditor or any auditor or representative designated by City, shall be entitled from time to time during the Term upon thirty (30) days' written notice and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's Books and Records. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's General Admission Revenues and Non-General Admission Revenues and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's Agents in making the examination. City shall also be entitled at City's option and expense, once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit to be performed by a certified public accountant designated by City. Any audit shall be conducted during usual business hours at the Premises.

10.6 Survival of Obligations. Without limiting any other provisions of this Lease, the Parties' obligations contained in this Section 10 [Fiscal Duties and Matters], including, without limitation, Tenant's payment and reporting obligations, shall survive the Expiration Date or any earlier termination of this Lease.

11. SUBSEQUENT CONSTRUCTION

11.1 City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Pursuant to the Commission's authority under Sections 5.100, 5.101 and 5.105 of the Charter, any Subsequent Construction, other than Minor Alterations (as defined below in Section 11.2), shall require the Commission's prior written approval, which approval shall not be unreasonably withheld or delayed, except that the Commission may approve or deny in its sole discretion any Subsequent Construction which results in any of the following:

(i) Construction of additional buildings or other additional structures, other than to replace or Restore those previously existing;

(ii) An increase in the bulk or height of any Improvements beyond the bulk or height approved for the Improvements;

(iii) Material alteration of the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Material increase in the floor load of the Improvements on the Premises;

(v) A material decrease in the building area of the Museum or any other area of the Premises that adversely affects the revenues generated;

(vi) A material increase in the structures built upon the Premises; and

(vii) Performance of Subsequent Construction involving material or non-cosmetic replacement or reconstruction that involves design, colors, or materials not originally approved by City in accordance with the construction of the Project, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability and appearance to the materials originally installed, as determined by City.

(b) Notice of Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires the Commission's approval, Tenant shall notify the

Director of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction. Within thirty (30) days after receipt of such notice from Tenant, the Director shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires the Commission's approval.

(c) **Permits.** Tenant acknowledges that the provisions of this Section are subject to Sections 14.1(a) and 11.6(a)(ii). In particular, Tenant acknowledges that the Commission's approval of Subsequent Construction (or the fact that Tenant is not required to obtain the Commission's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the City itself in its regulatory capacity.

11.2 Minor Alterations. Unless otherwise required under Section 11.1(a)(i)-(vii), the Commission's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements which do not materially affect the structural integrity or design of the Improvements (b) recarpeting, repainting the interior of any building on the Premises, groundskeeping, or similar alterations, or (c) any other Subsequent Construction which does not require a building permit (collectively, "Minor Alterations").

11.3 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires the Commission's approval under this Section 11, Tenant shall prepare and submit to the Commission, for review and written approval hereunder, reasonably detailed schematic drawings (as amended or modified, the "Schematic Drawings"), and following the Commission's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "Construction Documents"). The Commission may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. The Commission shall approve or disapprove Construction Documents submitted to it for approval within sixty (60) days after submission. Any disapproval shall state in writing the reasons for disapproval. If the Commission deems the Construction Documents incomplete, the Commission shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If the Commission notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If the Commission disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 11.4 [City Approval of Construction Documents], the Commission shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in the Commission's previous notice of rejection, and the Commission shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If the Commission fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 11.3, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved, provided that Tenant first provides the Commission with at least twenty (20) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, the Commission and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. The Commission and Tenant shall communicate and consult informally as frequently as necessary to ensure that the formal submittal of any Construction Documents to the Commission can receive prompt and speedy consideration.

11.4 City Approval of Construction Documents. Upon receipt by Tenant of a disapproval of Construction Documents from the Commission, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses the Commission's written objections and the Commission shall approve or disapprove such revised portions in the same manner as provided in Section 11.3 [Construction Documents in Connection with Subsequent Construction] for approval of Construction Documents (and any proposed changes there) initially submitted to the Commission. If Tenant desires to make any substantial change in the Final Construction Documents after the Commission has approved them, then Tenant shall submit the proposed change to the Commission for its reasonable approval. The Commission shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to the Commission. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

11.5 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence.

(b) Reports and Information. During periods of construction, Tenant shall submit to the Commission written progress reports when and as reasonably requested by the Commission, but not more frequently than once every three (3) months, except that during the last three (3) months during any period of such construction, the Commission may request that such reports be submitted monthly.

11.6 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by the Commission:

(i) The Commission shall have approved all final construction documents (or those aspects of the final construction documents as to which the Commission has an approval right under Section 11.1 [City's Right to Approve Subsequent Construction]);

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Section 14 [Compliance with Laws];

(iii) Tenant shall have submitted to the Commission in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to the Commission of Tenant's ability to pay such costs as and when due.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-acceptable methods. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Neither City nor the Commission shall have any responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in the construction of any Improvements to the Premises shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest general prevailing rate of wages for the labor so performed. Tenant further agrees that, as to the construction of such improvements under this Lease, Tenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Tenant shall require any contractor to provide, and shall deliver to the Director every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements.

(f) Coordination with Commission. During the Term of this Lease, Tenant shall coordinate, and shall cause its Agents to coordinate, all activities related to any construction or Subsequent Construction at the Premises with the Commission in connection with the Commission's operations and shall cause such construction or Subsequent Construction to not materially interfere with the use and operations of the Commission at or in the Premises.

11.7 Safety Matters. Tenant while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

11.8 As-Built Plans and Specifications. With respect to any Subsequent Construction for which the Commission's approval was required under this Section 11, Tenant shall furnish to the Commission one set of as-built plans and specifications with respect to such Subsequent Construction within ninety (90) days following completion. If Tenant fails to provide such as-built plans and specifications to the Commission within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from the Director, the Commission will thereafter have the right to cause an architect or surveyor selected by the Commission to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to the Commission promptly upon the Director's request. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

12. UTILITIES

12.1 Utilities. Utilities and services furnished to or used by the Parties in connection with the operation of the Premises, including without limitation, gas, electricity, water, telephone service, janitorial service and trash collection, and connection charges, shall be provided and paid for by the Parties in accordance with any approved annual Management Plan, as described in Section 9, above. The Parties agree that any and all utility Improvements proposed by Tenant shall be subject to the provisions of Section 11.1 [City's Right to Approve Subsequent Construction] and that all utility improvements (whether now existing or hereafter installed) shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant, regardless of how or when they were acquired or installed. City shall not be liable for any failure or interruption of any utility service furnished to the Premises. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease.

12.2 Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities may be installed on the Premises without the prior written approval of the Commission, which approval may be withheld in Commission's sole and absolute discretion. Any wireless telecommunications system shall be subject to the Commission's approval pursuant to the City's adopted policy on the siting and requirements for wireless telecommunications systems. In any event, no such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, telecommunications or transmission equipment reasonably required for City's or City's operations, including, without limitation, facilities for City emergency or 800 MHz City wide radio system communications facilities (or its successor), at a location on top of the Improvements reasonably acceptable to Tenant.

13. LIENS

13.1 Liens. Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases and Permitted Title Exceptions existing as of the Effective Date and not caused or suffered to arise by Tenant or Tenant's use and occupancy of the Premises, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of subtenants), except only for Impositions being contested as permitted by Section 6, and (iii) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 6. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

13.2 Mechanics' Liens. Tenants shall keep the Premises, Tenant's leasehold estate and all of City's property (real and/or personal) free (including, without limitation, the Park Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not cause a lien to be released of record by payment or posting of a proper bond within thirty (30) days following the imposition of any such lien, City shall have, in addition to all other remedies provided herein and by Law or equity, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable Attorneys' Fees and Costs) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to the Commission, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of such contest.

14. COMPLIANCE WITH LAWS

14.1 Compliance with Laws.

(a) **Tenant's Obligation to Comply.** Tenant shall perform its obligations under any annual Management Plan and conduct its use and operation of the Premises in strict compliance at all times with all present or future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, including, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq., and Title 24 of the California Code of Regulations, all Laws relating to seismic repair, reinforcement or retrofitting, and all Environmental Laws, including, without limitation, all Laws with respect to asbestos and underground or above-ground storage tanks containing Hazardous Materials.

14.2 Regulatory Approvals.

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use and operation of the Premises under any annual Management Plan may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall not seek any Regulatory Approval without first obtaining the written consent of the Director.

(b) **City Acting as Owner of Real Property.** Tenant further understands and agrees that City, acting by and through the Commission is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

14.3 Compliance with Insurance. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk. Tenant shall faithfully observe, at its expense, any and all requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

15. FINANCING; ENCUMBRANCES; SUBORDINATION

15.1 No Encumbrances by Tenant. Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the Park Facilities, City's fee estate in the Premises or any adjoining property, City's interest under this Lease, Tenant's leasehold interest under this Lease, or any portion thereof.

(a) Restrictions on Financing. Without limiting the foregoing, Tenant shall not:

(i) engage in any financing or other transactions creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease without obtaining the prior written consent of the City's Board of Supervisors, in its sole and absolute discretion; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances without obtaining the City's prior written consent, in its sole and absolute discretion.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises or any other real property of City in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in Premises, nor its right to receive rent, to any Encumbrancer of Tenant.

(c) No Amendment. Under no circumstance shall City have any obligation to amend this Lease in connection with (i) Tenant's issuance of the Bonds or any refunding thereof, or (ii) any other indebtedness of Tenant now or hereafter arising.

(d) Violation of Covenant. Any Encumbrance by Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

16. DAMAGE OR DESTRUCTION

16.1 General. If at any time during the Term any Damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, the rights and obligations of the Parties shall be governed by Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated, and any other applicable Law.

16.2 Destruction Due to Risk Covered by Insurance. If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall apply the proceeds of such insurance as instructed in writing by the Commission. Such destruction, in and of itself, shall not terminate this Lease.

16.3 Destruction Due to Risk Not Covered by Insurance. If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk not required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall, to the extent feasible, continue to operate the Premises in substantially the same manner as they were being operated immediately before destruction; provided, however, in the event of Major Damage (as defined below) either party may elect to terminate this Lease by providing to the other party written notice thereof within sixty (60) days of the date of such Major Damage. As used herein, the term

"Major Damage" means Damage to or destruction of greater than twenty-five percent (25%) of the usable square footage of the Premises or Improvements.

17. ASSIGNMENT AND SUBLETTING

17.1 Restriction on Assignment and Subletting. Tenants, its successors and any permitted assigns shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet or license any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), or cause or permit any other Transfer, including a Significant Change, without (a) the prior written consent of the Director in each instance, which the Director may withhold in his or her sole and absolute discretion, and (b) the prior written consent of the Commission in the case of a proposed Assignment, Sublease or Transfer of the Tenant's entire interest under this Lease. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant. City has entered into this Lease with Tenant in reliance on Tenant's identity and the special skills of Tenant in its ability to conduct the Uses and perform the obligations hereunder, and the foregoing prohibition on Assignment and Subletting is expressly agreed to by Tenant as an inducement to City to enter into this Lease.

17.2 Notice of Proposed Transfer. If Tenant desires to enter into a Transfer, then it shall give written notice (a "Notice of Proposed Transfer") to the Director of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Transfer, including a draft copy of the proposed Assignment of Sublease agreement or, in the event of a Significant Change, documentation related to such Significant Change. Tenant shall provide the Director with all documentation then available related to the proposed Transfer (with copies of final executed documentation to be supplied on or before the effective date thereof), sufficient information to permit the Director to determine the identity and character of the proposed Transferee, financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the Director may reasonably request.

17.3 Conditions. Any Transfer is further subject to the satisfaction of the following conditions precedent:

(a) Assumption of Tenant's Obligations. Any proposed Transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant under this Lease (including, without limitation, the covenants contained in Section 9.1 [Tenant's Operation, Maintenance and Repair Obligations] hereof) and any other agreements or documents entered into by and between City and Tenant relating to the Project, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject;

(b) Acceptable Transferee. The proposed Transferee has demonstrated to Director's reasonable satisfaction (i) that it will use the Premises in the same manner as Tenant under this Lease and has or will obtain all permits, licenses and approvals necessary to operate the Premises lawfully; (ii) that it will not materially adversely affect implementation of Project in accordance with the terms of this Lease; (iii) that it has at least substantially the same amount of experience and qualifications related to implementation of the Project; and (iv) that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned; and

(c) Approval of Transfer Documents. The Director shall have approved, in his or her sole discretion, the form and content of all instruments and other legal documents involved in effecting the Transfer (the "Transfer Documents"), and executed copies of all such Transfer Documents shall have been delivered to the Director.

17.4 Effect of Transfer. No Transfer by Tenant nor any consent by the Director, the City or the Commission shall relieve Tenant, of any obligation to be performed by Tenant under this Lease. Any Transfer that is not in compliance with this Article shall be void and, at the Commission's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any rent or other payments by or on behalf of City from a proposed Transferee shall not constitute consent to such Transfer by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

17.5 Indemnity for Relocation Benefits. Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

18. DEFAULT; REMEDIES

18.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") hereunder:

(a) Tenant Defaults.

(i) Any failure by Tenant to perform or comply with any covenant, condition or representation made under this Lease, including any failure to perform in accordance with any annual Management Plan, provided Tenant shall have a period of forty-five (45) days from the date of written notice of such failure from City within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion;

(ii) Tenant permits or suffers a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease, provided Tenant shall have a period of thirty (30) days from the date of written notice from City within which to cure any default hereunder; or

(iii) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within ninety (90) days.

(iv) The exercise by the Trustee of any of its remedies under the Indenture or any other documents evidencing or securing the Bonds issued by the Tenant shall constitute an Event of Default under this Lease, provided Tenant shall have such period(s) of time as may be provided in the Bond Documents within which to cure such default under the Bond Documents and this Lease.

(v) Any failure to maintain any insurance required to be maintained by Tenant under this Lease.

(vi) Tenant engaging in or allowing any use not permitted hereunder or engaging in any activity prohibited by Section 8.3 or any other provision in this Lease, and such activity continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or if such cure cannot reasonably be completed within such fifteen (15) day period, if Tenant does not commence such cure within such fifteen (15) day period, or having so commenced, does not prosecute such cure with diligence and dispatch to completion.

(b) City Defaults.

(i) Any failure by City to perform or comply with any covenant, condition or representation made under this Lease, provided City shall have a period of forty-five (45) days from the date of written notice of such failure from Tenant within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, City shall have a reasonable period to complete such cure if City promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion.

18.2 Remedies. Upon the occurrence and during the continuance of an Event of Default beyond any applicable cure period, the non-defaulting party shall have the following rights and remedies:

(a) City Remedies.

(i) The right to terminate this Lease, upon written notice provided to Tenant, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting General Admission Revenues or Non-General Admission Revenues, and other amounts due or payable by Tenant under this Lease to the date of such termination.

(ii) In addition to the other remedies provided in this Lease, City shall be entitled at any time after an Event of Default or threatened Default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. In addition, after the occurrence of any Event of Default, City shall be entitled to collect damages or to seek any other equitable relief which may be appropriate to the circumstances of such Event of Default where such relief does not impose personal liability on Tenant or its Agents.

(b) Tenant Remedies.

(i) The right to terminate this Lease, upon written notice provided to City, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting General Admission Revenues or Non-General Admission Revenues, and other amounts payable by Tenant under this Lease to the date of such termination.

(ii) In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after an Event of Default by City to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. In addition, after the occurrence of any Event of Default by City, Tenant shall be entitled to any other equitable relief where appropriate and where such relief does not impose personal liability on

City or its Agents; provided, however, (1) in no event shall Tenant be entitled to recover or obtain from City or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages directly or proximately arising out of a default by City hereunder) or Losses other than Tenant's actual damages incurred as a result of a City Default, (2) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a Default by City hereunder, and (3) Tenant shall have no remedy of self-help.

18.3 City's Right to Cure Tenant's Defaults. If an Event of Default by Tenant occurs, then City, in the discretion of the Director, may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable Attorneys' Fees and Costs, in remedying or attempting to remedy such Event of Default. Tenant's obligations to repay sums paid by City under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

19. WAIVER OF CLAIMS

19.1 Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant or any of its Agents for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, indirect, special, incidental and consequential damages, (including, without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever, including, without limitation, all claims arising from the joint or concurrent negligence of City or its Agents. Notwithstanding the foregoing, nothing herein shall relieve City from Losses caused directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of City for any consequential, incidental or punitive damages including, but not limited to, lost profits and arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, City, the Commission, their respective departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City of its Agents.

(b) In connection with the foregoing releases set forth in this Section 19.1, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant's Initials: _____

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

20. INSURANCE

20.1 Tenant's Insurance. Tenant shall maintain or cause to be maintained throughout the Term of this Lease, insurance in the following amounts and coverages:

(a) Property insurance, on an all-risk form, including earthquake (subject to the provisions of Section 20.2(d)) and flood (subject to the provisions of Section 20.2(e)), for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars ($10,000) each occurrence (except as to earthquake and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 20.1(a) and the insurance required under Section 20.1(g) may be required in order to comply with the requirements of Section 20.2(d) and Section 20.2(e). Such insurance shall include Tenant and City as named insureds as their respective interests may appear. With respect to the City's interests, such insurance shall include rental interruption coverage in an amount equal to ______________________. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Tenant and reasonably acceptable to City; provided, however, that City's Risk Manager shall have the right, at any time, to ascertain the full insurable value at its own expense.

(b) Boiler and Machinery insurance, comprehensive form, covering damage to or loss or destruction of pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery, equipment and property, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars ($10,000) each accident.

(c) Comprehensive or commercial general liability insurance with limits not less than Five Million Dollars ($5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Broadform Property Damage, Explosion, Collapse and Underground (XCU), Independent Contractors, Personal Injury, Products and Completed Operations occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto.

(d) At all times during any period of Subsequent Construction, Comprehensive Builder's Risk insurance, on an all-risk form, including earthquake (subject to the provisions of Section 20.2(d)) and flood (subject to the provisions of Section 20.2(e)), for one hundred percent (100%) of the completed value of any Improvements, Alterations or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars ($10,000) each occurrence (except as to earthquake and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 20.1(d) and the insurance required under Section 20.1(g) may be required in order to comply with the requirements of Section 20.2(d) and Section 20.2(e). Tenant may require its contractor or consultant to maintain the coverage required hereunder.

(e) Workers' compensation insurance in statutory amounts with Employer's Liability coverage limits of not less than One Million Dollars ($1,000,000) each accident.

(f) Comprehensive or Business Automobile Liability Insurance with limits not less than One Million Dollars ($1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(g) Business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 20.1(a),(b) and (d) covering a period of not less than one (1) year following Completion, with an annual limit of not less than three (3) Million Dollars ($3,000,000) per year.

(h) Environmental pollution or contamination liability insurance, during the course of any Hazardous Materials Remediation activities taking place prior to Completion of the Project, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence combined single liability for Bodily Injury and Property Damage or, with the prior written approval of the Commission (such approval not to be unreasonably withheld, conditioned or delayed). Tenant may require its contractor or consultant to maintain the coverage required hereunder.

(i) Professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, with any deductible not to exceed Ten Thousand Dollars ($10,000) each claim. Tenant may require its contractor or consultant to maintain the coverage required hereunder

(j) Such other risks in such amounts as City's Risk Manager may reasonably require.

[CONFIRM WITH CITY'S AND TENANT'S RISK MANAGERS]

~~1.~~20.2General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by the Commission.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term of this Lease and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

(i) Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as Additional Insureds, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(d) As to earthquake insurance only:

(i) from and after Completion of the Project, such insurance shall be in an amount at least equal to the lesser of (1) the amount available at commercially reasonable rates from recognized insurance carriers, or (2) one hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale, as determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to City, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate;

(ii) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the Improvements.

(e) As to flood insurance only:

(i) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates.

(ii) rates for all food insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one tenth of one percent (.1%) of the then-current replacement cost of the Improvements.

(f) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the addresses(es) for City set forth in the Basic Lease Information.

20.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance and copies of additional insured policy endorsements in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, the Commission may, at its option, procure the same for the account of Tenant, and the costs thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

20.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at the Commission's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant conform to such general commercial practice.

20.5 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, this Lease shall terminate immediately, at the Commission's election, made in his or her sole and absolute discretion by delivery of written notice to Tenant, upon the lapse of any required insurance coverage, unless Tenant reinstates the required insurance coverage within ten (10) days after the Commission's notice to Tenant and no event shall have occurred which gives rise to any claim related to this Lease.

20.6 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

20.7 City's Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise, except for fine arts insurance to be maintained by the City during the Term of the Lease for the permanent art collection and objects on loan to the Museum.

20.8 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the faulty or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20.9 Contractors' Insurance. Tenant shall provide evidence acceptable to the Commission that any contractor engaged by Tenant to perform work on the Premises maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the Commission, including, but not limited to, Workers' Compensation Insurance (including Employers' Liability Insurance) and insurance against liability for injury to persons and property arising out of all such contractor's operations, and the use of owned, non-owned or hired automotive equipment in all such operations, and all such policies shall name City and its Agents as additional insureds.

21. ACCESS BY CITY

21.1 Access to Premises by City.

(a) Access to Perform City's Obligations and Exercise City's Rights Hereunder. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times with no notice whatsoever to perform any obligations and to exercise any rights of City under applicable Law or under this Lease.

(b) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all times for any purpose.

21.2 Park Facilities. Without limiting Section 21.1 [Access to Premises by City] above, City shall have the right at all times, to enter upon the Premises upon forty-eight (48) hours' advance written or oral notice (except in cases of emergency as determined by City, in which cases no notice shall be required), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Park Facilities, including, without limitation, any public utility facilities. City shall bear the expense of any such activities, unless and to the extent the need is caused by the acts, omissions or negligence of Tenant or its Agents. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

22. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which any rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relief upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The Commission shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

23. APPROVALS BY CITY

23.1 Approvals by City. Except as otherwise set forth in this Lease, any consent or approval required by the City or the Commission, must be given or exercised by the Director in his or her discretion. The Director or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The Director's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by the Commission or the Director of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of the Commission or the Director, the Director, or his or her designee, shall be authorized to execute such instrument on behalf of the Commission, except as otherwise expressly provided by this Lease or applicable Law, including the City's Charter.

24. RESERVED

25. SURRENDER

25.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises; provided, however, the Commission may, at its sole option, elect to permit Tenant to leave such Alterations, Improvements or Tenant's Personal Property on the Premises. In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at the Commission's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

25.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises, and any Alterations, Improvements or Tenant's Personal Property which City permits Tenant to leave on the Premises, shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances, and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises and any permitted Improvements or Alterations or Tenant's Personal Property.

25.3 Termination Without Further Notice. This Lease shall terminate without further notice on the Expiration Date.

26. HOLDOVER

26.1 Holding Over. Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. In any such event, at City's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant, such tenancy terminable by either Party upon thirty (30) days' prior written notice. Such tenancy shall be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute an Event of Default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments by Tenant hereunder, and whether or not such amounts are at a holdover rate or the rate in effect at the end of the Term of the Lease.

27. HAZARDOUS MATERIALS

27.1 Hazardous Materials Compliance.

(a) Compliance with Laws. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, provided that Tenant may store and use such substances in the Premises and any Improvements in such limited amounts as are customarily used for general office purposes (such as copy toner and supplies), art conservation laboratory treatments and purposes (so long as such substances and quantities are in each instance specifically approved in writing by the Director), maintenance purposes, and for janitorial purposes; and further provided that such storage and use permitted hereunder shall be at all times in full compliance with all applicable Environmental Laws.

(b) Notice. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Materials in, on or about the Premises or any Improvements. Each Party may from time to time request (but no more than four (4) times per year) that the other Party provide information adequate for the requesting Party to determine that any Hazardous Materials permitted hereunder is being handled in compliance with all applicable Environmental Laws, and the Party receiving such a request shall promptly provide all such information. In addition, each Party shall provide the other Party with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance with such Party with the terms and provisions of this Section 27) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications). Without limiting Section 21 [Access by City] hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Materials and compliance with the provisions hereof at all reasonable times upon at least forty-eight (48) hours' advance written notice to Tenant (except in the event of an emergency).

27.2 City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not undertake any Remediation in response to the presence, handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to the Commission for the City's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. The Commission shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If the Commission disapproves of any such Hazardous Materials Remediation plan, the Commission shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (a) in compliance with all applicable Hazardous Materials Laws, (b) to the reasonable satisfaction of the Commission, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the Regional Water Quality Control Board and the San Francisco Department of Public Health.

28. REPRESENTATIONS AND WARRANTIES

28.1 Representations and Warranties of Tenant. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a nonprofit public benefit corporation duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

(b) Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and any other agreements contemplated by this Lease.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Neither Tenant nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Tenant of this Lease or any of the terms and covenants contained in this Lease. There are no pending or threatened, to Tenant's knowledge, suits or proceedings or undischarged judgments affecting Tenant or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant or any of its members.

(d) Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (1) any agreement, document or instrument to which Tenant or any member is a party or by which Tenant's or any member's assets may be bound or affected, (2) to Tenant's knowledge, any Law, statute, ordinance, regulation, or (3) the articles of incorporation or the bylaws of the Tenant, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or its members other than contemplated by this Lease.

(f) Meeting Financial Obligations. Tenant is generally meeting its current liabilities as they mature. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

29. SPECIAL PROVISIONS

29.1 Charter Provisions. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco. Nothing contained in this Lease shall be construed to amend, alter or modify any obligations of the Parties under the Charter or applicable law. In the event of any conflict between the terms of this Lease and the Charter, the terms of the Charter shall govern. The Lease shall not provide to the Tenant a contractual right or remedy to enforce the City's obligations under the Charter.

29.2 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(B) of the San Francisco Administrative Code.

(d) Condition to Lease. Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including, but not limited, to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

29.3 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to more toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

29.4 Tropical Hardwood/Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Except as permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood wood product in the construction of the Project or any other Improvements on the Premises.

29.5 Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

29.6 Waiver of Relocation Assistance Rights. If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 26 [Hold Over], Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260, et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601, et seq., or under any similar law, statute or ordinance now or hereafter in effect, relating to condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

29.7 Employee Signature Authorization Ordinance. City has adopted an Employee Signature Authorization Ordinance (San Francisco Administrative Code Sections 23.31-23.35). That ordinance requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant acknowledges and agrees that Tenant and Tenant's subtenants will comply with the requirements of such Ordinance to the extent applicable to Tenant's operations on the Premises.

29.8 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful and knowing failure by Tenant to make such disclosure, if any, shall constitute grounds for the City's termination and cancellation of this Lease.

29.9 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Administrative Code Sections 82.1 to 82.8 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

29.10 Pesticide Prohibition. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Commission an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance and, (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the Commission, from seeking a determination from the Board on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

~~1.11~~29.11 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit and such information must be disclosed under the Administrative Code. Information provided which is covered by this Section will be made available to the public upon request.

29.12 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

29.13 City's Obligations Subject to Controller's Certification of Funds. The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained herein, there shall be no obligation for expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

29.14 Incorporation. Each and every provision of the San Francisco Administrative Code described or referenced in this Lease is hereby incorporated by reference as though fully set forth herein. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Section 18 [Default; Remedies] of this Lease, unless (i) such failure is otherwise specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section.

29.15 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us\HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Appraiser shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within 30 days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Contract regarding services to be performed on the Premises entered into by Tenant shall require the Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Contract or Subcontract and shall certify to the Purchasing Department that it has notified the Contractor or Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor or Subcontractor through written agreement with such Contractor or Subcontractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Contractor and Subcontractor performing services on the Premises. If any Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

29.16 Mitigation Measures. To the extent related to the ongoing use and operation of the Premises, the Premises shall be operated in accordance with the Mitigation Measures attached to this Lease as Exhibit B.

29.17 Taxpayer Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et seq., and San Francisco Ethics Commission Regulations 3.710(a)-1 - 3.730-1, prohibit the public officials who approved this contract from receiving (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of $50; (2) any employment for compensation; (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Tenant understands that any public official who approved this Lease may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this Lease. Upon request, Tenant agrees to furnish, before this Lease is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this Lease is entered into, Tenant with a list of public officials who, under the Conduct Code, approved this Lease. Failure of any public official who approved this Lease to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this Lease. Notwithstanding anything to the contrary in this Lease, neither party shall have the right to terminate this Lease due to any failure by the other party to provide the information described in this paragraph.

30. GENERAL PROVISIONS

30.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises and (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by facsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

30.2 No Implied Waiver. No failure by either Party hereto to insist upon the strict performance of any obligation of the other Party under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no delivery or acceptance of any amounts due under this Lease during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of the applicable Party's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either Party given in any instance under the terms of this Lease shall not relieve the other Party of any obligation to secure any other consent of the applicable Party in any other or future instance under the terms of this Lease.

30.3 No Accord or Satisfaction. No submission by Tenant or acceptance by City of any sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any rent or other amounts under this Lease, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as any charge hereunder shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

30.4 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Party waiving any right.

30.5 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date, which falls on a Saturday, Sunday or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited to, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of rent and any other sums due hereunder.

30.6 Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

30.7 Interpretation of Lease.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

30.8 Successors and Assigns. Subject to the provisions of Section 17 [Assignment and Subletting] hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their successors and assigns.

30.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

30.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

30.11 Governing Law; Selection of Forum. This Lease shall be construed and enforced in accordance with the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

30.12 Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understanding and agreements regarding this Lease. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

30.13 Attorney's Fees and Costs. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable Attorneys' Fees and Costs.

30.14 Recordation. This Lease will not be recorded by either Party.

30.15 Extensions by City. Upon the request of Tenant, City in its reasonable discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including, but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

30.16 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

30.17 Further Assurances. The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

30.18 Transition Procedures. Without limiting Section 25 [Surrender] above, upon the expiration of the Term or earlier termination of this Lease, for whatever reason, Tenant and City shall do the following (and the provisions of this Section 30.18 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management of the Premises:

(a) **Transfer of Licenses.** Upon the expiration or earlier termination of the Lease, Tenant shall use its best efforts (i) to transfer to City or City's nominee all licenses, operating permits and other governmental authorizations and all contracts which City elects to assume, including contracts with governmental or quasi-governmental entities and management contracts, that may be necessary for the operation of the Premises and completion of any repairs, maintenance, Improvements or Alterations (collectively, "Licenses"), or (ii) if such transfer is prohibited by law or City otherwise elects, to cooperate with City or City's nominee in connection with the processing by City or City's nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by City or City's nominee.

(b) **Leases and Concessions.** Tenant shall assign to City or City's nominee simultaneously with the termination of this Lease, and the assignee shall assume, all leases, subleases, and concessions agreements in effect with respect to the Premises then in Tenant's possession which City or City's nominee elects to assume.

(c) **Books and Records.** All books and records for the Premises kept by Tenant shall be delivered promptly to City or City's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Tenant at all reasonable times for inspection, audit, examination, and transcription for a period of one year and Tenant may retain (on a confidential basis) copies or computer records thereof.

30.19 Survival of Indemnities. Termination of this Lease shall not effect the right of either party to enforce any and all indemnities given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

30.20 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

30.21 Reserved .

30.22 Non-Liability of Officials, Employees and Agents of City or Any Other Indemnified Parties. No elective or appointive board, commission, member, director, officer, employee or other Agent of City or any other Indemnified Parties shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease, and Tenant agrees that it will have no recourse with respect to any obligation or Default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

30.23 Non-Liability of Tenant's Members, Officers, Directors, Shareholders, Agents and Employees. No member, officer, director, shareholder, Agent or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

30.24 No Third Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

30.25 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL RESOLUTIONS OF THE COMMISSION AND CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THIS LEASE SHALL BE NULL AND VOID UNLESS THE COMMISSION, CITY'S MAYOR AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and Tenant have executed this Lease in triplicate as of the date first written above.

TENANT:

FINE ARTS MUSEUMS FOUNDATION,
a California non-profit public benefit
corporation

By: ______________________________
Its: ______________________________

By: ______________________________
Its: ______________________________

Date:__________________

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

____
Mayor

____
Clerk of Board of Supervisors

Date:__________________

APPROVED BY
BOARD OF TRUSTEES OF THE
FINE ARTS MUSEUM OF
SAN FRANCISCO
PURSUANT TO RESOLUTION NO. ______
ADOPTED ____________________________

____
Secretary

RECOMMENDED:

____
Director
Board of Trustees of the Fine Arts Museums
of San Francisco

APPROVED AS TO FORM;

DENNIS J. HERRERA, City Attorney

By: ________________________________
Deputy City Attorney

APPENDIX A

DEFINITIONS

1. **"Administrative Code"** means the San Francisco Administrative Code, as amended or modified.
2. **"Affiliate of Tenant"** means any person or entity which directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under the common Control with, Tenant.
3. **"Agents"** means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.
4. **"Alterations"** means any alterations, installations or additions to any Improvements or to the Premises.
5. **"Assignment"** has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
6. **"Attorneys' Fees and Costs"** means reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.
7. **"Basic Lease Information"** means the information with respect to this Lease summarized in Article I hereof.
8. **"Bonds"** means one or more series of bonds or other instruments of indebtedness issued on behalf of the Tenant and COFAM for the purpose of financing or refinancing the Project.
9. **"Bond Documents"** means the Indenture, the Bonds, the Loan Agreement and any and all documents evidencing, securing or relating to the issuance or refunding of the Bonds.
10. **"Charter"** means the 1996 Charter of the City and County of San Francisco, as amended or modified.
11. **"City"** means the City and County of San Francisco, a municipal corporation.
12. **"City's Personal Property"** means the personal property of City, including all works of art, fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible and intangible personal property or assets, whether now or hereafter located in, upon or about the Premises, belonging to City and/or in which City has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor. City's Personal Property specifically shall include the works of art, furniture, personal property, furniture, equipment, machinery, supplies, and other tangible and intangible assets owned by the City and controlled by the Commission. Upon transfer of the Project to the City, the Improvements shall also become the City's property.
13. **"City's Sign Guidelines"** means any and all policies or rules of the City now or hereafter in effect governing the placement of signs, advertisements, awnings, canopies, banners or other

exterior decoration, including as provided under the City's Park Code, a copy of which has been provided to Tenant.

14. **"Commencement Date"** means the date on which the Term of this Lease commences as described in Section 4.2 [Commencement Date and Expiration Date] hereof.
15. **"Commission"** means the Board of Trustees of the Fine Arts Museum of San Francisco organized and existing under Article V of the San Francisco Charter.
16. **"Completion"** means completion of the Project, as evidenced by the issuance of a temporary certificate of occupancy or certificate of occupancy for the Premises by the City's Department of Building Inspection.
17. **"Control", "Controlled", "Controlling" and "Controls"** mean the ownership of greater than fifty percent (50%) of the voting interests of a partnership or limited liability company, or alternatively, ownership of greater than fifty percent (50%) or more of the voting stock of a corporation or of the membership interests in a limited liability company.
18. **"Damage"** means as set forth in Section 16.1(b).
19. **"Director"** means the Director of the Museum appointed by the Commission pursuant to Charter Section 5.102.
20. **"Effective Date"** means the date on which this Agreement becomes effective pursuant to Section 4.3 [Effective Date] hereof.
21. **"Encumber"** means create any Encumbrance.
22. **"Encumbrance"** means any mortgage, deed of trust, leasehold deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument, or other lien, mortgage or encumbrance.
23. **"Encumbrancer"** means a mortgagee, beneficiary of a deed of trust or leasehold deed of trust, or other holder of an Encumbrance.
24. **"Environmental Laws"** means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions, in or, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.
25. **"Event of Default"** means any one of the events of default described in Section 18 [Default; Remedies] hereof following the expiration of any applicable cure periods.
26. **"General Admission Revenues"** means all general admission fees which are collected or received by the Tenant, as more particularly described in Section 10.1(a) below.
27. **"Hazardous Material"** means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste: listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.
28. **"Hazardous Material Claims"** means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened in writing by any third party against City or its Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury

resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common Law, Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, damages to any natural resource (as that term is defined in CERCLA) owned by City, and reasonable Attorneys' Fees and Costs and consultants' fees and experts' fees and costs.

29. **"Holidays"** means any date on which either City or Tenant are authorized or required by Law or executive order to be closed for a state or national Holiday.
30. **"Impositions"** means any and all real and personal property taxes, general and special assessments, excises, licenses, liens, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements, including, without limitation, possessory interest taxes.
31. **"Improvements"** means any and all buildings, structures, fixtures, facilities, installations, machinery and equipment, erected, built, constructed, installed or placed, in on, over or under the Premises, including, without limitation, the Project, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping, and each and every type of physical improvement to the extent located at, on or affixed to the Premises; provided, however, the Improvements shall specifically exclude any of City's Personal Property and any of Tenant's Personal Property.
32. **"Indemnify"** means indemnify, protect, defend and hold harmless.
33. **"Indemnified Parties"** means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Commission, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.
34. **"Indenture"** means the Indenture dated as of **[March 1, 2002]** providing for the issuance of the Bonds, as originally executed and as may be supplemented or amended from time to time.
35. **"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.
36. **"Invitees"** when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.
37. **"Landlord"** means the City and County of San Francisco, acting through its Board of Trustees of the Fine Arts Museums of San Francisco.
38. **"Law"** means any law, statute, ordinance, resolution, rule, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, or over the Commission whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.
39. **"Lease"** means this Lease as it may be amended in accordance with its terms.
40. **"Lease Year"** is a calendar year, except that the first Lease Year shall commence on the Commencement Date and the last Lease Year shall end on the date this Lease expires or terminates.
41. **"Loan Agreement"** means the Loan Agreement dated as of **[March 1, 2002]** executed in connection with the issuance of the Bonds, as originally executed and as may be supplemented or amended from time to time.
42. **"Losses"** means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and

expenses, including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs.

43. **"Merchandise Sales"** means all sales or rentals of, cards, posters, books, apparel and equipment, magazines, newspapers and any other merchandise from any museum retail store or elsewhere on the Premises or related to the Premises, including, without limitation, sales of Museum merchandise ordered via the internet or telephone.
44. **"Mitigation Measures"** means those measures set forth on Exhibit B.
45. **"Mortgage"** means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.
46. **"Mortgagee"** means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.
47. **"Museum"** means the M. H. deYoung Memorial Museum.
48. **"Non-General Admission Revenues"** means any revenues generated or collected on the Premises, other than General Admission Revenues, including without limitation, the special admissions fees paid to the Museum, selling price of all merchandise or services sold, leased, licensed or delivered in or from the Premises or any Improvements by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not, except as specifically set forth below), including the gross amount received by reason of orders taken on the Premises or any Improvements although filled elsewhere, and whether made by store personnel or vending machines. Non-General Admission Revenues shall include, without limitation, (i) all revenues and income derived from (1) special admission fees, instructional fees received by Tenant, reservation fees, membership and other fees and dues of any kind (including nonrefundable deposits), but specifically excluding any General Admission Revenues; (2) merchandise sales (without deduction for any rent, interest or other payments made by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees or concessionaires); (3) the operation of restaurants, banquet facilities, and any other food or beverage operations or sales on the Premises, if allowed pursuant to the terms of this Lease; (4) proceeds from parking facilities, if applicable; (5) proceeds from business interruption insurance, loss of earnings insurance or other insurance of a similar kind; (6) payments from, or pass-throughs to, any subtenants or any other entity or individual for use of the Premises; (7) pay telephones, stamp machines, music machines, amusement machines, food and beverage vending machines or public toilet locks; (8) rent or other fees for the use of any of the Improvements; and (9) whatever source, which Tenant in the normal and customary course of Tenant's operations would credit or attribute to Tenant's business conducted at, upon or from Premises; and (ii) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Premises which are neither included in nor excluded from Non-General Admission Revenues by other provisions of this definition, but without any duplication.
49. **"Official Records"** means the official records of the city and county of San Francisco.
50. **"Park Facilities"** means, except for the Premises, any and all park property under the jurisdiction or control of the City adjacent to or otherwise used in connection with the Premises, including, without limitation that certain park property commonly known as the Music Concourse, any and all facilities, fixtures or improvements used by City in the operation of such other park properties, any and all public utilities and pipelines serving such other park properties, and any paved, public streets located within the Premises.
51. **"Party"** means Landlord or Tenant; "Parties" means both Landlord and Tenant.
52. **"Permitted Encumbrances"** means and includes: (1) liens and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith by the Commission; (2) the lien of taxes and assessments which are not

delinquent, or if delinquent, are being contested; (3) defects and irregularities in the title to the Premises which, whether singly or in the aggregate do not materially adversely affect the value or operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (4) easements, exceptions or reservations for the purpose of pipelines, fiber optic lines, telephone lines, telegraph lines, power lines and substations, and other utilities, roads streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which, whether singly or in the aggregate, do not materially interfere with or impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (5) statutory liens or encumbrances arising in the ordinary course of business which are not delinquent or are being contested in good faith by the Commission; (6) the lease or license of the use of a part of the Premises to art or culture-related non-profit corporations or for the use in performing special events, professional or other services in accordance with customary museum, charitable trust and/or business practices; (7) any liens, encumbrances and title matters existing on the date of execution of this Lease, including matters which are discoverable by a survey or inspection of the Premises; and (8) Encumbrances necessary to repair the Premises in the event of damage or destruction to the Premises.

53. **"Permitted Uses"** means those uses set forth in Section 8.1 [Permitted Uses].
54. **"Person"** means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision hereof.
55. **"Premises"** has the meaning given in Section 3.1 [Leased Premises] hereof and as more particularly described and depicted on Exhibits A-1 and A-2. The Premises shall include any permitted Improvements, including the Project, together with any additions, modifications or other Alterations thereto permitted hereunder, and any and all utilities located on and serving the Premises. Notwithstanding anything to the contrary in this Lease, the Premises do not include the rights reserved to City pursuant to Section 3.2, nor the Park Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises, nor any paved, public streets located within the Premises.
56. **"Prohibited Activities"** means the following activities:

(a) any activity that creates a public or private nuisance under applicable Laws;

(b) any activity that is not within the Permitted Uses, including any use not authorized under any applicable annual Management Plan;

(c) any activity or object that causes material damage or material injury to the Premises;

(d) any activity that will in any way materially injure, materially obstruct or materially interfere with rights of any owners or occupants of adjacent properties, including the Park Facilities;

(e) use of the Premises for sleeping or personal living quarters;

(f) any distress, fire bankruptcy or going-out-of-business sale on the Premises without the prior written consent of the Commission;

(g) any activity that will cause a cancellation of any insurance covering the Premises;

(h) any activity or use which is not in compliance with all applicable Laws concerning the Premises or Tenant's use and occupancy of the Premises; and

(i) any granting of licenses, easements or access rights over the Premises by Tenant if the same would be binding on City's reversionary interest in the Premises, or changes in applicable land use Laws or conditional use permits for any uses not provided for hereunder, in each instance without the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, and subject to the provisions of Section 14 [Compliance with Laws].

57. **"Project"** means as defined in Recital E, above.
58. **"Regulatory Approval"** means any authorization, approval or permit required by an governmental agency having jurisdiction over the Project or the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Department of Building Inspection and the Commission.
59. **"Release"** when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant or Landlord, or in, on, under or about the Premises or Park Facilities or any portion thereof.
60. **"Remediation"** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or the Park Facilities or which have been, are being, or threaten to be released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.
61. **"Reserved Rights"** means certain rights reserved by the City relating to the Premises, including the following:

(a) Any and all water and water rights, including, but not limited to, (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to unreasonably interfere with the permitted use thereof by Tenant, without Tenant's prior written consent, which may be withheld by Tenant in its reasonable discretion;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the Park Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall not unreasonably interfere with Tenant's use and operation of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of Section 3.2(e) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio devices, cables and other equipment associated with a telecommunications cell site, provided that any such easement, right-of-way, permit or license shall not unreasonably interfere with Tenant's use and operation of the Premises hereunder, and provided further that the grant of any such easement, right-of-way, permit or license shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, right of way, permit or license; and

(g) All additional rights of access provided for in Section 21[Access by City] below.

(h) Any approval rights of the Commission or the Director over Tenant's use and operation of the Premises provided for in this Lease, and the authority of the Commission and the Director over the Premises, including all Improvements thereon, under applicable Law.

62. **"Restoration"** means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. All Restoration shall be conducted in accordance with the provisions of Section 11 [Subsequent Construction]. ("Restore" and "Restored" shall have the correlative meanings.)
63. **"Rules and Regulations"** means those rules and regulations of the Commission regarding operation of the Premises set forth in Exhibit C attached hereto and subject to change from time to time.
64. **"Significant Changes"** means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of ownership interests in Tenant, in one or more transactions (collectively, a "Transaction"), by operation of law or otherwise, that results in any of the following:

(a) As to the original named Tenant hereunder, a change in the identity of the Person Specially Controlling Tenant, or (ii) as to any successor permitted Tenant hereunder, a change in the identity of the Person Specially Controlling said Tenant (herein, the "**Tenant Owners**"), such that the Tenant Owners which, collectively, have Special Control of Tenant as of the date immediately prior to the Transaction no longer are Specially Controlling Tenant from and after the date of such Transaction;

(b) The dissolution of Tenant, or

(c) The sale of over fifty percent (50%) of the assets of Tenant.

65. “**Special Control**” means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and “Specially Controlling” and “Specially Controlled” shall have correlative meanings).
66. “**Sublease**” has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
67. “**Subsequent Construction**” means all repairs to and reconstruction, replacement, addition, expansion, restoration, Alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Improvements.
68. “**Tenant**” means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word “itself,” the term Tenant shall also refer to the successors and assigns of Tenant’s interests under this Lease, provided that the rights and obligations of Tenant’s successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.
69. “**Tenant’s Personal Property**” means the personal property of Tenant, including all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible or movable personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor that can be removed without structural or other material damage to the Improvements or the Premises.
70. “**Term**” means the term of this Lease as determined under Section 4.1 [Term of Lease] hereof.
71. “**Transfer**” means any Assignment, Sublease or Significant Change.
72. “**Transferee**” means any recognized assignee of any part of Tenant’s leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Section 17 [Assignment and Subletting] hereof.
73. “**Trustee**” means the trustee bank or banks appointed as trustee for the holders of the Bonds.
74. For purposes of Section 11 only, “**Work**” means as defined in Section 11.7.

EXHIBIT A

PREMISES

[See Attached Exhibits A-1 And A-2]

EXHIBIT A-1

DESCRIPTION OF PREMISES

EXHIBIT A-2

MAP OF PREMISES
EXHIBIT A-1

EXHIBIT B

MITIGATION MEASURES

EXHIBIT C

RULES & REGULATIONS

EXHIBIT D

MEMORANDUM OF LEASE COMMENCEMENT DATE

FINE ARTS MUSEUMS OF SAN FRANCISCO

2001 Year End Gifts of Works of Art

In accordance with resolutions adopted by the Board of Trustees of The Fine Arts Museums Foundation on January 15, 2002 and the Executive Committee of the Board of Trustees of the Fine Arts Museums of San Francisco on December 13, 2001, the gifts on the following pages were accepted by the Director of Museums, or his designee, for the period from November 30, 2001 (last Acquisitions Committee meeting) through December 31, 2001.

Africa, Oceania, and the Americas

Zaire
Power Figure, 19th - 20th century

Ghana
Portrait Head of a Royal Person, 17th century

Philippines
Basket with Slider, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Shell Basket, early 20th century

Philippines
Spoon Basket, early 20th century

Philippines
Winnowing Basket, early 20th century

Philippines
Rice Storage Basket (kamuwan) with Lid, early 20th century

Philippines
Rice Platter (giyag), early 20th century

Philippines
Winnowing Basket (lig-o), early 20th century

Philippines
Snail Seive (haydu), early 20th century

Philippines
Tobacco Container (koppit), early 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Philippines
Chicken Basket (alubi'ub), mid 20th century

Philippines
Storage Basket (tayaan) with Lid, early 20th century

Philippines
(Rice) Storage Basket (Hu'up or tayaan), early 20th century

Philippines
" Bishop" Backpack Basket, early 20th century

Philippines
Winnowing Basket, early 20th century

Philippines
(Rice) Storage Container Basket (cul bong), early 20th century

Philippines
Basket (labba) with Pontal, early 20th century

Philippines
Double Rice Plate (akob), early 20th century

Philippines
Shell Basket, early 20th century

Philippines
Lunch Basket (topil), early 20th century

Philippines
Backpack Basket (hape'eng) with Lid and Straps, mid 20th century

Philippines
Snail Sieve (haydu), mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Backpack Basket, mid 20th century

Philippines
Snail Basket, mid 20th century

Philippines
Ceremonial Meat Board, mid 20th century

Philippines
Spoon (ido pakko), mid 20th century

Philippines
Spoon (ido pakko), mid 20th century

Philippines
Spoon (ido pakko), early 20th century

Philippines
Bowl, mid 20th century

Philippines
Bowl, mid 20th century

Philippines
Winnowing Basket (lig-o), mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Spoon, early 19th century

Philippines
Spoon, mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Knife with Sheath, early 20th century

Philippines
Rice Cutter in the form of a Female Figure, 19th century

Philippines
Rice Cutter in the form of an Animal, 19th century

Philippines
Bulul, early 20th century

Philippines
Spoon, early 20th century

Philippines
Spoon, early 20th century

Philippines
Basket or Tote Bag, mid 20th century

Philippines
Spoon, mid 20th century

Philippines
Belt, early 20th century

Philippines
Oval Bowl, early 20th century

Philippines
Spoon, early 20th century

Philippines
Ladle, early 20th century

Philippines
Bowl, early 20th century

Philippines
Round Bowl, early 20th century

Philippines
Spoon, early 20th century

Philippines
Weaving Tool, early 20th century

Philippines
Rice Storage Basket (cul-bong) with Lid, mid 20th century

Philippines
Akob Basket with Lid, mid 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Philippines
Lunch Basket (topil) with Lid, mid 20th century

Indonesia
Door with Buffalo Head Motif, 19th century

Indonesia
Coffin Lid with Serpent Symbol, early 19th century

American Art

Ray Beldner (American)
Untitled (Money Bags), 1999

William Wheeler (American) b. 1940
Mendocino Headlands, Near Elk, 1997

Tony King (American) b. 1944
Mendocino Headlands, Near Elk, 1999

Dirk van Erp (American) 1860 - 1933
Water Pitcher, 19th - 20th century

Wayne Thiebaud (American) b. 1920
Ponds and Streams, 2001

Yoshitomo Saito (Japanese) active 20th century
Pacific Crossing, 1998

Vincent James (English) b. 1972
Hole, 1999

Winslow Homer (American) 1836 - 1910
Portrait of Albert Post, circa 1864

Artist: Narcissus Quagliata (Italian) b. 1942, in collaboration with David Ruth
Dionysis, 1993

Nicolai Fechin (American) 1881--1955
Flower Girl, early 20th century

United States
Santa Ines Mission Bench, early 19th century

Durant (American) active mid 20th century
Bowl, 1920

Jalan (American) active mid 20th century
Hexagonal Plate, ca. 1920 - 1939

Jalan (American) active mid 20th century
Footed Bowl, 1933

Jalan (American) active mid 20th century
Tea Cup, ca. 1920 - 1939

Jalan (American) active mid 20th century
Vase, 1926

Jalan (American) active mid 20th century
Pedestal Plate, 1928

European Art

Henry Moore (English) 1898 - 1986
Two Piece Reclining Figure No. 9, 1968

Prints and Drawings

Yoshitoshi (Japanese) 1839 - 1892
Untitled (Man in a Black Floral Kimono) from the series 100 Phases of the Moon, ca. 1890

Koho (Japanese) 1870--1946
Untitled (Crane in a Pine Tree), early 20th century

Elinor Lambert (English) active early 20th century
Caudebec (France), 1927

Ernest David Roth (American) 1879 - 1964
Viale San Gregorio, Roma, 1905

Artist: Winslow Homer (American) 1836 - 1910; Publisher: Harper & Brothers (American) active 19th--20th century
A Parisian Ball - Dancing at the Mabille, Paris from Harper's Weekly, November 23, 1867, 1867

Marc Choisnard (French) active mid 20th century
No. 23, La Cote Rocheuse, 1950

David Lance Goines (American) b. 1945
Proof 1 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 2 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 3 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 4 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 5 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 6 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 7 for the poster Rainbow Zenith, 1970

David Lance Goines (American) b. 1945
Proof 8 for the poster Rainbow Zenith, 1970

Cartón de Colombia, SA (Colombia) active 20th century
AGPA (Artes Gráficas Panamericanas); Copy 1, 1979

Cartón de Colombia, SA (Colombia) active 20th century
AGPA (Artes Gráficas Panamericanas); Copy 2, 1979

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1954-55-56; Copy 1, 1954 - 1956

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1954 55 56, 1954 - 1956

Container Corporation of America (American) active 20th century
Great Ideas of Western Man; Copy 1, 1974

Designer: Herbert Bayer (American) 1900 - 1985; Publisher: Container Corporation of America (American) active 20th century
World Geo-Graphic Atlas: A Composite of Man's Environment, 1953

Container Corporation of America (American) active 20th century
Great Ideas, 1976

Container Corporation of America (American) active 20th century
Color Harmony Manual, 1958

Photographer: Torkel Korling (American) active mid 20th century; Publisher: Container Corporation of America (American) active 20th century
Wild Flowers: a new perspective on the beauty of wild flowers, 1958

Artist: Herbert Bayer (American) 1900 - 1985; Publisher: Container Corporation of America (American) active 20th century
Herbert Bayer, 1965

Cartón y Papel de México, SA (Mexican) active 20th century
El Lienzo de Tlaxcala, 1983

Artist: Herbert Bayer (American) 1900 - 1985; Printer: Zokeisha Publications, Ltd. (Japanese) active 20th century; Publisher: Container Corporation of America (American) active 20th century
Herbert Bayer : Book of Drawings, 1961

Container Corporation of America (American) active 20th century
The State Series: 53 Advertisements by Native ists; Copy , ca. 1950 - 1959

Container Corporation of America (American) active 20th century
Fifty-Two Advertisements: Great Ideas of Western Man; Copy 1, ca. 1950 - 1954

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1950-51-52, 1950 - 1952

Container Corporation of America (American) active 20th century
Great Ideas of Western Man: Advertisements for 1952-53-54, 1952 - 1954

Esther Brock Bird (American) b. 1899
Jackson Memorial at Washington Square, N.Y.C., 1938

Maurice Busset (French)
Air Raid from the series Paris Bombarde, 1918

Alexandre Charpentier (French) 1875--1963
Liseuse (Woman Reading), 1896

Michael diCerbo (American) active 20th century
Infertu, 1994

Fernand Louis Gottlob (French) 1873--1935
2e Exposition des Peintres Lithographes du 10 au 25 Janvier, Salle du Figaro, Rue Drouot, Plate 219 from the series Les Maitres de l'Affiche, 1899

Lester George Hornby (American) 1882 -
Rocky Neck in Snow, Gloucester, 1918

Lester George Hornby (American) 1882 -
Fanueil Hall from Quincy Market, ca. 1915 - 1920

Artist: Hung Liu (Chinese) 1948 - ; Printer: Tamarind Lithography Workshop Inc. (American) 1960 -
Children at Work: Boy with Pots, 2000

Charles Frederick William Mielatz (American) 1864 - 1919
In the Bowery (New York City), 1891

Horst Janssen (German) 1929 -
Plate 2 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Horst Janssen (German) 1929 -
Plate 3 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Horst Janssen (German) 1929 -
Plate 4 from the series Laatzen Bilderbogen uber die Trauer und die Hoffhung, 1969

Artist: Matt Phillips (American) b. 1927; Publisher: Smith Andersen Editions (American)
Untitled (Broadway), 2001

Artist: John Beech (American) active late 20th century;
Publisher: Smith Andersen Editions (American)
Untitled Abstract, 2001

G. Lekegian and Company (France) active mid 19th century
No. 18, Pyramide de Chiech, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 33, Mosquée Mouhamed Aly, Citadelle, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 73, Porte d'Une Maison (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 183, Groupe de Minarets, Vue Prise de El Azhar, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 182, Mosquée El Azhar, Cour des Théologiens, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 299, Mosquée Touloun, Les Arcads, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 189, Rue Sook el Silah, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 122, Bord du Nil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 135, Dame Indigene, Costume de Ville, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 123, Dame au Cane (?) Voilée, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 55, Mosq.(uée) & Rue Emir Akhar, Pres de la Citadelle, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 34, Mosquée Mohemed Aly, Fontaine d'Ablutions, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 48, Mosquée Sultan Hassan, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 44, Verandah d'Une Maison Arabe, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 285, Rue du Marchée des Chaussures, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 77, Vue Generale du Caire, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 281, Ciscleurs sur Cuivres a Khari Kalil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 49, Citadelle (?) Cimitiere (?) Arabes, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 194, Shepheard's Hotel, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 74, Rue Bab el Vazir, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 80, Mosquée Kait Bay, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 81, Mosquée Kaitbay, Intérieur, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 79, Maisons de Village, 19th century

G. Lekegian and Company (France) active mid 19th century
No. (?), Magasin (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 329, Rue a Bab-el-Wazir, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 232, Dahabiéh, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 90, Dahabiéh, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 3, Route des Pyramides, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 96, Bord du Nil, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 42, Interieur de la Mosquée Sultan Hassan, 19th century

G. Lekegian and Company (France) active mid 19th century
No. ?, Cérémonie de la Prossession du Mahmal, 19th century

Langahi (?) (French (?))
No. 8, Quai de Port Said, 19th century

Langahi (?) (French (?))
Monument de Lesseps a Port Said, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 9, La Pyramide de Chéops, Vue des Cimetieres Arabes, 19th century

Langahi (?) (French (?))
Queen Victoria's Diamond Jubilee a Port Said, 19th century

Langahi (?) (French (?))
Entrée du Canal a Port Said, 19th century

Langahi (?) (French (?))
No. ?, Vue ???? a Port Said, 19th century

Anonymous (English)
No. 53, Pompey's Pillar, Alexandria, 19th century

Anonymous (English)
Untitled (View of Cairo (?) from Rooftops), 19th century

Anonymous (English)
Mosque of Sultan Hassan, Cairo, 19th century

Anonymous (English)
Fruit and Water Sellers, Cairo, 19th century

Anonymous (English)
No. 57, Street in Cairo, 19th century

Anonymous (English)
Inundation of the Nile, Pyramids of Geezeh, 19th century

Anonymous (French)
Untitled (Mummy Necklace), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 345, Sakiéh (Noria), 19th century

Anonymous (French)
Untitled (Front of Chariot), 19th century

Anonymous (French)
Untitled (Habillement de Momie), 19th century

Anonymous (French)
Untitled (Two Crowns on Velvet), 19th century

Anonymous
Untitled (Secandra Inside Gate ?), 19th century

Photographer: Anonymous (French) ; Photographer: Anonymous
No. 128, Interior of Saman Burj and the Scale of Justice, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 9, La Pyramide Cheffren, Vue a Travers las Palmiers, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 294, Mosquée Touloun: Méda, Fontaine d'Ablution & Minaret, 19th century

G. Lekegian and Company (France) active mid 19th century
No. 64, Rue Dark el Garriere (?), 19th century

G. Lekegian and Company (France) active mid 19th century
No. 32, Mosquée Mouhamed Aly, Interieur, 19th century

Artist: Adja Yunkers (American) 1900 - 1983;
Printer: Paul M. Maguire, Inc. (American) ; Publisher: Smith Andersen Editions (American)
Chalice, 1981

Artist: Adja Yunkers (American) 1900 - 1983; Printer: Paul M. Maguire, Inc. (American) ; Publisher: Smith Andersen Editions (American)
Immoblie Sun, 1981

Alexander Calder (American) 1898 - 1976
Untitled (Rabbit), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Rooster), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Three Monkeys), mid 20th century

Alexander Calder (American) 1898 - 1976
Untitled (Three Monkeys), mid 20th century

Artist: Richard Estes (American) 1932 - ; Publisher: Editions Domberger (German) active late 20th century
Salzburg Cathedral, 1982

Artist: Bernard Maybeck (American) active mid 20th century; Artist: Julia Morgan (American) active early 20th century
Western Hills Memorial City, Lawndale, California (Project for Mrs. Annie Darbee), ca. 1939

Arthur Felig (Weegee) (American (?)) active mid 20th century
Sleeping Man in Doorway, ca. 1940

Stanley Hoyt (American (?)) active early 20th century
I. Golden for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Poppy Club Masquerade Ball Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Stratton's Apparel Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
O.F.C. Whiskey Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Aloha ClubMasquerade Ball Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Byron Mauzy Pianos Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Kelleher & Brown Iriash Tailors Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Chas. T. Conlan for Police Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Cary Safes Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Corby's Canadian Whiskey Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Roos Bros., Imperiales Cigarettes Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Elect Joseph E. O'Donnell Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Theo Planz, Tailor Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
G.A. Buell Co. Mill Work Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Yosemite Lager Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Untitled (Street Scene with Cigar Store), ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Ed C. Harrison for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Weiland's Extra Pale Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
John Hunt for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Hub Clothiers Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Easton Additions to Burlingame Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Southern Pacific Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Vote for Thos. Finn for Sheriff Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
The Governors / Examiner Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Geo. H. Cabaniss for Superior Judge Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Bohemian Beer Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Celebrate New Year's Eve in the Mission Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Vote for Henry A. Melvin, Judge Superior Court Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Lindholm's Stoves Billboard, ca. 1907 - 1910

Stanley Hoyt (American (?)) active early 20th century
Federal Ranges Billboard, ca. 1907 - 1910

Artist: Andy Warhol (American) 1930 - 1987; Publisher: Random House (American) active 20th century
Andy Warhol's Index Book, 1967

Herbert Rose Barraud (English) 1845--1896
The Poet, Robert Browning, ca. 1888

Giorgio Sommer (Italian) 1834 - 1914
a) Venus by Canova, Villa Borghese, Rome; b) Baths of Caracalla, Rome, ca. 1870

Artist: Wolfgang Behl (German) b. 1918; Author: C.F.W. Behl (German) active 20th century
Publisher: Verlag Viernheim (Swiss) active 20th century
Adonis und Aphrodite, 1961

Artist: Siegmund v. Suchodolski (Austrian (?)) active early 20th century
Publisher: Verlag Gerlach and Wiedling (Austrian) active early 20th century
31. Deutsche Schwante, ca. 1910

Artist: DeLoss McGraw (American) 1945 - ; Authors: Gary Soto (American (?)), Robert Pinsky (American (?)), Czeslaw Milosz (Polish), Robert Hass (American (?))
Stories Are Horizontal Pictures, 1991

Artist: Robert Cremean (American) active 20th century; Makers: David Brock (American) active 20th century, David Renner (American) active 20th century; Publisher: Brighton Press (American) 1977 -
Procustes Inn Register: Monologue of the Traveller, Monologue of the Guest, 1994

Peter Kuckei (German) b. 1938
Untitled, 1993

Peter Kuckei (German) b. 1938
Untitled, 1993

Peter Kuckei (German) b. 1938
Untitled, 2001

Peter Kuckei (German) b. 1938
Untitled (China Basin), 1995

Artist: Peter Kuckei (German) b. 1938; Author: Yan Geling
Peter Kuckei San Francisco, 1995

Dennis Leon (American) 1933 -
Harrison Lake #4, 1987

Dennis Leon (American) 1933 -
Onestone #8, 1988

Rembrandt Harmensz van Rijn (Dutch) 1606 - 1669
Saint Jerome in a Dark Chamber, 1642

Matt Phillips (American) b. 1927
Untitled (Seated Female Nude), 1984

John Friedlander (French) 1912 -
L'Herbier, mid 20th century

Anonymous (Indian)
Untitled (Portrait of a Royal Personage), 18th century

Artist: Grisha Bruskin (American) 1945 -; Publisher: Christopher Sweet / Marlborough Graphics (American) ; Author: Lev Rubinstein (Russian)
Another Name / General Instruction, 1993

Artist: William Hogarth (British) 1697 - 1764; Artist: Luke Sullivan (Irish) 1705 - 1771
Moses Brought to Pharaoh's Daughter, 1752

Jacques Lipchitz (French) 1891 - 1973
Head of a Woman, ca. 1930 - 1939

Artist: Félix Bracquemond (French) 1833 - 1914; Printer: André Salmon (French) 1850 - ; After: Jean-Baptiste-Camille Corot (French) 1796 - 1875; Publisher: Gazette des Beaux-Arts (French)
Le Lac, early 20th century

Muriel Hudson (American) active 20th century
California Landscape, ca. 1930 - 1939

Artist: Arthur Pond (English) 1705 - 1758; After: Parmigianino (Francesco Mazzola) (Italian) 1503 - 1540
Group of Five Figures, 1734

Artist: Jean-Louis-André-Théodore Géricault (French) 1791 - 1824; Artist: Charles Louis Lesaint (French) b. 1795; Printer: Godefroy Engelmann (French) 1788 -
Plate 150, Église de Saint Nicolas from the series Maritime, Rouen, 1823

Artist: Percy Gray (American) 1869 - 1952;
Printer: Laura Lengyel (American) active late 20th century
Untitled (Tree on Cliffs Overlooking Ocean), 2000

Leigh Hyams (American) 1936 -
Eighteen Waterfalls, 2001

Lyonel Feininger (American) 1871 - 1956
Untitled (Cottage Garden), 1902

Artist: Leonard Baskin (American) 1922--2000; Publisher: Editions Medicina Rara (American) ; Printer: Curwen Press, Ltd. (English) active 20th century
Ars Anatomica: A Medical Fantasia in Thirteen Drawings, 1972

Artist: Yuri Kuper (British, b. Russia) 1940 - ; Printer: Atelier Bordas (French)
Estampologia, 2000

Russia
Lenin, 1920

Russia
Contemporary Architecture (CA2), 1929

Artist: Henri Matisse (French) 1869 - 1954; Publisher: Editions du Chene (French)
Visages, 1946

Jack Welpott (American) active mid 20th century
Sharon Moore, ca. 1965

Artist: Yozo Hamaguchi (Japanese) 1909--2000; Publisher: Vorpal Gallery (American)
Untitled (Nut), late 20th century

Richard Smith (British) 1931 -
Untitled (Abstract with three sheets of paper hanging), 1975

John Friedlander (French) 1912 -
L'Oiseau Rouge, 1960

John Friedlander (French) 1912 -
Untitled (Abstract with Green and Black Fish / Birds), mid 20th century

Eduardo Chillida (Spanish) 1924 -
Untitled (Black and White Abstract), mid 20th century

Gunther Fruhtrunk (German)
Untitled (Black, Red and Blue Abstract), mid 20th century

Artist: Peter Kuckei (German) b. 1938; Printer: Thomas Wojak (Amertican (?)) active late 20th century
Peter Kuckei, San Francisco, 1993

Percy Gray (American) 1869 - 1952
Farm Buildings after the Rain, ca. 1908

Percy Gray (American) 1869 - 1952
Vase of Roses, ca. 1940

Percy Gray (American) 1869 - 1952
Young Woman with a Coral Necklace, ca. 1911

Textiles

China
Fragment of a Lampas; T'ang Dynasty, 7th - 10th century

Persia
Fragment of a Lampas; Ilkhanid Dynasty, 13th - 14th century

China
Fragment of a Collar, 10th - 12th century

Designer: Candace Kling (American) active late 20th century;
Designer: Fred Kling (American) active late 20th century
Women's Long Skirt,

White Duck Workshop (American) active 20th century
Maxidress,

Anonymous (American)
Empire-style Maxidress,

Turkmen, Ersari, Afghanistan, Asia
Carpet Fragment, 19th century

Turkmen, Kashgar, China, Asia
Carpet, late 19th century

Anonymous (English)
Brisé Fan, ca. 1810

Colamina (French)
Franco- Prussian War Commemorative Fan, ca. 1871

Anonymous (American)
Moxie Advertising Fan, ca. 1925

Anonymous (American)
St. Louis World's Fair Commemorative Fan, ca. 1904

Claude Montana (French) active late 20th century
Jacket and Matching Earrings, ca. 1984

Thierry Mugler (French) active late 20th century
Day Dress, ca. 1988

Gibson Palermo (American) active late 20th century
Jacket, ca. 1985

Anonymous (American)
"Ice Cream" Belt, ca. 1970

Anonymous (Canadian)
Man's Two-Piece Suit, ca. 1972

Hardy Amies (English)
Man's Tie, ca. 1972

Anonymous (American)
Psychedelic-patterned Man's Tie, ca. 1969

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Panel from a Woman's Blouse (huipil), early 20th century

Guatemala
Two Panels from a Woman's Blouse (huipil), 20th century

Maker: Johnson, Stephens & (?) Shoe Company (American);
Owner: L. Futterman (American)
Pair of Women's Laced Boots, ca. 1915

Maker: Johnson, Stephens & (?) Shoe Company (American) ; Owner: L. Futterman (American)
Pair of Women's Laced Boots, ca. 1915

Turkmen, Yomut sub-group, Asia
Main Carpet, 18th century

Guatemala
Headband (cinta), 20th century

Guatemala
Headband (cinta), 20th century

Guatemala
Headband (cinta), 20th century

Guatemala
Belt, mid 20th century

Guatemala
Huipil Fragment, 20th century

Mexico
Album Popular de Punta de Cruz (Embroidery Pattern Book), 1974

Mexico
Album de Punta de Cruz (Embroidery Pattern Book), 1972

Guatemala
Backstrap Loom, ca. 1970

Guatemala
Backstrap Loom, ca. 1970

Designer: Claire McCardell (American) b. 1905; Maker: Townley (American)
Popover Dress and Coat, ca. 1952 - 1956

Claire McCardell (American) b. 1905
Woman's Coat, ca. 1952 - 1956

The White House (American) active 20th century
Women's Mules, ca. 1950 - 1959

Herbert Levine (American) active mid 20th century
Woman's Pumps, ca. 1960 - 1965

Herbert Levine (American) active mid 20th century
Women's Handbag, ca. 1960 - 1965

Anonymous (American)
Evening Shoes, ca. 1925 - 1929

Cristobal Balenciaga (Spanish) 1895 - 1972
Hair Ornament, ca. 1960 - 1969

Anonymous (American)
Del Monte Catsup Barbecue Apron,

Anonymous (American)
Man's Shirt,

Anonymous (American)
Women's Playsuit,

Roger Vivier (French) active 20th century
Women's Pumps,

Gianfrance Ferre (Italian) active late 20th century
Women's Sandals, ca. 1980 - 1989

Evins (American) active 20th century
Women's Thigh-High Boots,

Ransohoff's, San Francisco (American)
Evening Dress, ca. 1930

Designer: Nina Foley (American) ; Shoemaker: Sommer and Kaufmann (American)
Wedding Dress with Four - Piece Veil, Orangeblossom Headdress, Stockings, Shoes, ca. 1920 - 1929

Anonymous (American)
Evening Dress with Attached Belt, ca. 1930 - 1939

Brownlee Milliners (American)
Cloche Hat, ca. 1920 - 1929

Anonymous (English)
Boy's Cloche-style Hat, ca. 1930 - 1939

Maker: Anonymous (American) ; Shoemaker: Cammeyer (American)
Boy's Daytime Ensemble (Coat, Shorts, Cap, Shoes), ca. 1930 - 1939

Maker: Anonymous (American) ; Shoemaker: Cammeyer (American)
Boy's Daytime Ensemble (Coat, Shorts, Cap, Shoes), ca. 1930 - 1939

Anonymous (American)
Boy's Ensemble (Shorts and Sweater), ca. 1930 - 1939

Anonymous (American)
Boy's Ensemble (Shorts and Sweater), ca. 1930 - 1939

Anonymous (American)
Child's Dress, early 20th century

Anonymous (American)
Child's Coat with Two Matching Bonnets, early 20th century

Anonymous (Indian)
Shoes, 20th century

Mongolia
Mat (mu-sen), 19th - 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Cameroon
Young Woman's Cache-sex (dibul kouan), mid 20th century

Peru
Tie or Belt, 6th century - 4th century BC

Peru
Tie or Belt, 6th century - 4th century BC

Peru
Band or Garment Fragment, 6th century - 4th century BC

Peru
Loincloth, 6th century - 4th century BC

Peru
Loincloth Fragment, 6th century - 4th century BC

d'Anjou (Canadian)
Wedding Dress with Headdress, 1948

FINE ARTS MUSEUMS OF SAN FRANCISCO

Board of Trustees

January 31, 2002

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND THE STATE CEQA GUIDELINES (AND A STATEMENT OF OVERRIDING CONSIDERATIONS) IN CONNECTION WITH THE PROPOSED NEW DE YOUNG MUSEUM LOCATED AT 75 TEA GARDEN DRIVE IN THE MUSIC CONCOURSE OF GOLDEN GATE PARK, LOT 1 IN ASSESSOR'S BLOCK 1700 AND APPROVING THE DESIGN OF THE NEW DE YOUNG MUSEUM PROJECT AND AUTHORIZING THE CORPORATION OF THE FINE ARTS MUSEUMS TO PROCEED WITH THE PROJECT

WHEREAS, The New M.H. de Young Museum (the "Project") is proposed to be constructed at the museum's existing site at 75 Tea Garden Drive in the Music Concourse of Golden Gate Park, Lot 1 in Assessor's Block 1700, after demolition of the eight existing buildings comprising the M.H. de Young Museum and the Asian Art Museum and relocation of the Asian Art Museum to its new facility in the City's Civic Center; and

WHEREAS, The Corporation of The Fine Arts Museums of San Francisco ("COFAM") submitted its application for environmental review of the proposed New de Young Museum on July 12, 1999 (City Planning File No. 1999.455E) ; and

WHEREAS, The Planning Department for the City and County of San Francisco (the "Planning Department") determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on May 6, 2000; and

WHEREAS, On July 22, 2000, the Planning Department published the Draft Environmental Impact Report (hereinafter "DEIR") for the Project; and

WHEREAS, On August 24, 2000, the Planning Commission held a duly noticed public hearing on the DEIR, at which time opportunity for public comment was received on the DEIR, and written comments were received through August 24, 2000; and

WHEREAS, The Planning Department prepared responses to comments received at the public hearing on the DEIR and submitted in writing to the Planning Department, prepared revisions to the text of the DEIR and published a Draft Summary of Comments and Responses on November 22, 2000; and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the Project was prepared by the Planning Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available and the Draft Summary of Comments and Responses, all as required by law; and

WHEREAS, On December 7, 2000, the Planning Commission reviewed and considered the FEIR and, by Motion No. 16039, found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and that the FEIR was adequate, accurate and objective, reflected the independent judgment and analysis of the Planning Department and the Planning Commission and that the Summary of Comments and Responses contained no significant revisions to the DEIR, adopted findings relating to significant impacts associated with the Project and certified the completion of the FEIR in compliance with CEQA and the State CEQA Guidelines; and

WHEREAS, In January 2001, a court challenge to the Final EIR and the process by which the Final EIR was certified was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR and also setting aside the City's project approval actions taken subsequent to the December 2000 Final EIR certification; and

WHEREAS, The Board of Supervisors conducted a public hearing on August 20, 2001, to consider the appeal of the Planning Commission's certification of the Final EIR. At the August 20, 2001 hearing, and by letter to the Board of Supervisors dated August 17, 2001, COFAM stated that it had discovered a discrepancy in the height of the proposed Educational Tower analyzed in the Final EIR, and the height actually proposed for the tower, which affected the visual and shadow impact analyses of the Final EIR. The height of the tower analyzed for shadow and visual quality impacts in the Final EIR was based upon an inaccurate computer file which scaled the tower to 144 feet rather than its proposed 160 feet. COFAM and the Planning Department asked the Board of Supervisors to remand the Final EIR back to the Planning Department and Planning Commission to correct those errors; and

WHEREAS, At the August 20, 2001 hearing, the Board disapproved the certification of the Final EIR and remanded the Final EIR to the Planning Commission. The Board's findings directed the Planning Commission and Planning Department to revise the Final EIR to include corrections and related environmental analysis, as may be appropriate under CEQA, on the following issues: (1) errors and discrepancies in the shadow impacts analysis relative to the height of the Tower; (2) errors and discrepancies in the visual impacts analysis relative to the height of the Tower; (3) updating and correcting the Project Description relative to the height of the tower and to other information now available regarding the proposed Project design; and (4) broadening and correcting the description and related impacts analysis of the Project environmental setting relative to existing and potentially qualified historic resources, already addressed on Final EIR pages C&R.80 - C&R.82. The Board of Supervisors approved Motion M01-127 at its August 27, 2001 hearing specifying the revisions to be made to the Final EIR; and

WHEREAS, The Project's Educational Tower has been redesigned from the 160 foot height as described in the December 2000 Final EIR to 144 feet, with floor dimensions ranging from approximately 41 feet by 93 feet at the first floor to about 41 feet by 108 feet at the top, or ninth, floor. The Final EIR now includes minor text changes and revised figures to reflect the updated information; and

WHEREAS, The Final EIR has also been amended to include expanded information about the cultural resources in the area; and

WHEREAS, The revised sections of the Final EIR were published and made available to the Commission and the public on November 20, 2001; and

WHEREAS, On December 6, 2001, the Planning Commission reviewed and considered the revised FEIR and, by Motion No. 16291, found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31 and that the revised FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Summary of Comments and Responses contains no significant revisions to the Draft Environmental Impact Report, and certified the revised FEIR as in compliance with CEQA and the CEQA Guidelines; and

WHEREAS, On December 21, 2001 the Planning Commission's certification of the revised FEIR was appealed to the Board of Supervisors. The Board of Supervisors held a public hearing on January 14, 2002 and upheld the Planning Commission's certification of the FEIR in its Motion No. M02-8; and

WHEREAS, In Planning Commission Motion No.16336, the Planning Commission adopted findings for the Project, as required by CEQA, regarding the alternatives, mitigation measures and significant environmental impacts analyzed in the FEIR, a statement of overriding considerations for approving the Project, and a proposed mitigation monitoring program, which material was made available to the public and the Planning Commission for the Planning Commission's review, consideration and actions; and

WHEREAS, In Planning Commission Motion No.16337, the Planning Commission found that the shadow impacts of the Project on Golden Gate Park are not significant or adverse and new shadow cast on Golden Gate Park is considered de minimus, which Motion the Board of Trustees has reviewed and considered; and

WHEREAS, In Planning Commission Motion No. 16338, the Planning Commission found that the Project is, on balance, in conformity with the General Plan and the General Plan Priority Policies, which Motion the Board of Trustees of the Fine Arts Museums ("Board of Trustees") has reviewed and considered; and

WHEREAS, the Zoning Administrator for the City and County of San Francisco granted the requested parking variance for the New de Young Museum on January 28, 2002; and

WHEREAS, The Board of Trustees has heard, reviewed and considered the testimony presented to it at the public hearing and has further reviewed and considered other information pertaining to the Project presented by staff and included in the files of the Board of Trustees of the Fine Arts Museums on this matter; and

WHEREAS, Project environmental review files and other Project related Planning Department files (Planning Department File Nos. 1999.455E, 2000.1094K, 2000.1094R and 2000.1094V) have been available for review by the Board of Trustees and the public at the Planning Department's office located at 1660 Mission Street, and Board of Supervisors File No. 012284 has been available for review by the Board of Trustees and the public at City Hall Room 244, and those files are part of the record before the Board of Trustees; now, therefore, be it

RESOLVED, That the Board of Trustees has reviewed and considered the revised Final Environmental Impact Report ("FEIR") and hereby adopts the New de Young Museum Project CEQA Findings attached hereto as Attachment A, including its Exhibits 1 and 2, and incorporates the same herein by this reference; and, be it

FURTHER RESOLVED, That the Board of Trustees approves the design of the Project and authorizes COFAM to proceed with the Project.

ATTACHMENT A

NEW de YOUNG MUSEUM
CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

I. INTRODUCTION

The following findings are hereby adopted by the Board of Trustees of the Fine Arts Museums of San Francisco ("Board of Trustees") pursuant to the requirements of the California Environmental Quality Act, California Public Resources Sections 21000 et seq., ("CEQA"), the Guidelines for Implementation of CEQA, 15 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

Article II provides a description and history of the Project.

Article III sets forth the basis for approval of the Project, and the economic, social and other considerations which support the rejection of the Alternatives analyzed in the Final Environmental Impact Report ("FEIR").

Article IV sets forth findings as to the disposition of each of the mitigation measures proposed in the FEIR. Mitigation measures are grouped in the following categories: (1) mitigation measures proposed in the FEIR but which are not feasible at this time and would not be implemented in connection with the Project for the reasons stated but are recommended by the Board of Trustees for adoption, if appropriate, at the time of implementation of the Music Concourse garage project; and (2) mitigation measures which are proposed as part of the Project and are adopted by the Board of Trustees exactly as proposed in the FEIR. The full text of the mitigation measures as proposed in the FEIR is set forth in Exhibit 1 attached hereto. Exhibit 2, attached to these findings, contains the Mitigation Monitoring Program.

Article V discusses the environmental impacts of the Project; both the environmental impacts determined to be significant and those discussed in the FEIR but determined to be not significant and discusses whether there have been any changes to the Project or in the environment which would require additional environmental review.

Article VI identifies the unavoidable significant environmental impacts of the Project if mitigation measures are not adopted in the future to address cumulative transportation impacts.

Article VII contains a Statement of Overriding Considerations, setting forth specific reasons in support of the Board of Trustees's approval of the Project and its rejection of the Alternatives and Mitigation Measures to address cumulative impacts not implemented at this time as part of the Project.

II. PROJECT DESCRIPTION

A. Project Approvals. The Project is subject to a series of approvals that together define the terms under which the Project will occur, as follows:

1. Planning Code Section 101.1 Priority Planning Policies (Proposition M) and General Plan consistency findings as related to Planning Code Sections 234.1 and 290;

2. Determination under Planning Code Section 295 that new shadows cast by the Project on property under the jurisdiction of the Recreation and Park Board of Trustees are insignificant;

3. Parking Variance pursuant to Planning Code Section 305; and

4. Approval of final design and implementation by the Board of Trustees of the Fine Arts Museums of San Francisco; and

5. Possible approval of the New de Young Financing Plan and support of the decision of the Corporation of the Fine Arts Museums ("COFAM") and the Fine Arts Museums Foundation ("Foundation") to seek the sale and issuance of tax-exempt bonds by the appropriate state financing authority, which will be guaranteed by the future flow of pledges, in order to meet the cash flow requirements for the construction of the New de Young Museum; and

6. Possible approval of a Lease and Facilities Agreement between the Fine Arts Museums of San Francisco and the Foundation defining the respective roles and responsibilities of the Fine Arts Museums of San Francisco and the Foundation for the use and operation of the new de Young Museum and facilitating the financing for the new de Young Museum.

B. Consultation with Recreation and Park Department. Project landscaping and restoration plans, and Project access plans, will be developed and implemented in consultation with the Recreation and Park Department.

C. Project Description/Elements of Project. The proposed project would demolish and reconstruct the M.H. de Young Museum on the museum's existing site in Golden Gate Park. The project would include demolition of eight existing buildings ranging in height from 26 to 42 feet and fronting approximately 500 feet along Tea Garden Drive north of the Music Concourse. The existing buildings total approximately 230,000 sq. ft., and compose the de Young Museum and the Asian Art Museum. An existing 85-space surface parking lot used by the museum staff located on the north end of the site would be removed. The Asian Art Museum wing would be demolished after the Asian Art Museum is relocated to its new Civic Center building, planned to occur at the end of 2002. The New de Young Museum would include gallery space, a main lobby and courtyard, educational spaces, inner courtyards, café, museum store, tower observation area, curatorial and museum administration offices, a loading dock, art storage and conservation space, and other museum-related uses in one structure.

The New de Young Museum would be oriented in a southwest to northeast direction, the orientation of the adjacent Music Concourse. The building would include two main levels above grade, one level below grade, a varying roof height ranging from 33 to 48 feet, and a 144-foot tower at the northeast corner of the project site. The existing tower at the entrance of the de Young Museum is approximately 125 feet in height, and is five feet above grade for a total height of 130 feet from grade. Overall, the New de Young Museum would increase the floor area of the museum's functions from approximately 230,000 sq. ft. to approximately 300,000 sq. ft. on a smaller footprint than the existing de Young Museum and Asian Art Museum. This increase in area on a smaller footprint is possible primarily because of the departure of the Asian Art Museum and because the new plans incorporate a full basement and full second floor that the current de Young facility does not have. The basement level would include an auditorium and temporary exhibition galleries, coat check, loading docks accessible from John F. Kennedy Drive, storage areas, and mechanical operations. The ground floor would include a café, lobby, visitor information area, restrooms, interior courtyards, a museum store, gallery space, a Piazzoni Mural room, a library, and administrative offices. The second floor would have galleries for exhibitions of the permanent collection, a flexible gallery, conservation laboratories, and a textile study center. The Educational Tower would include educational uses with volunteer and docent training facilities, a teacher resource center, a library reading room, artist studio, classrooms, and an observation area.

The museum would be served by a vehicle drop-off area and primary entrance on Tea Garden Drive. Additional entrances would allow non-ticketed access to the museum's lobby west from John F. Kennedy Drive and east from the Japanese Tea Garden. The 85 existing paved parking spaces would be removed. The project would not provide replacement parking for these 85 parking spaces.

Excavation for the project would be up to approximately 25 feet in depth to provide the full basement and along the northeast portion of the project in order to allow natural light to enter the basement level. The existing basement, below grade on the northwest portion of the site, would be removed. The proposed project would include excavation of about 85,000 cu. yd. of soil, of which about 17,000 cu. yd. would be used to fill the existing basement of the Asian Art Museum.

The project would include development and implementation of a landscaping/restoration plan in consultation with the Recreation and Park Department, consistent with the Golden Gate Park Master Plan. The proposed project would include retention of the naturalistic plantings including an existing earth berm, with a row of mature trees atop it along the north edge of the project site along Kennedy Drive behind the existing parking lot. Smaller trees and shrubs covering the area between the earth berm and the sidewalk on Kennedy Drive and along the western edge of Kennedy Drive would be retained or replaced. Existing trees on the site would be saved, relocated or replaced, as determined by a tree survey of the project site and in consultation with the

Recreation and Park Department. The palm grove would be retained with the project. The interior courtyards would include new landscaping features. The Pool of Enchantment would be relocated and reconstructed on the site, and the existing two Sphinx statues and other sculptures, near the intersection of John F. Kennedy Drive and Tea Garden Drive, would be retained as part of the project.

D. History of Project Approval and CEQA Review. The original Final EIR for this Project was certified by the Planning Commission by its Motion No. 16039 on December 7, 2001. In January 2001, a court challenge to the Final EIR and the process by which the Final EIR was certified was initiated, and on August 2, 2001, the San Francisco Superior Court issued a Writ of Mandamus, requiring the Board of Supervisors to hear an appeal of the Final EIR. The Writ also set aside the City's project approval actions taken subsequent to the December 2000 Final EIR certification, including this Board of Trustees' approval action taken on December 14, 2000.

The Board of Supervisors conducted a public hearing on August 20, 2001, to consider the appeal of the Planning Commission's certification of the Final EIR. The Board reviewed and considered the written record, including the Final EIR, the appeal, and all of the public comments made and correspondence submitted in support of and opposed to the appeal. At the August 20, 2001 hearing, and by letter to the Board dated August 17, 2001, COFAM stated that it had discovered a discrepancy in the height of the proposed Educational Tower analyzed in the Final EIR, and the height actually proposed for the tower, which affected the visual and shadow impact analyses of the Final EIR. The height of the tower analyzed for shadow and visual quality impacts in the Final EIR was based upon an inaccurate computer file which scaled the tower to 144 feet rather than its proposed 160 feet. COFAM and the Planning Department asked the Board of Supervisors to remand the Final EIR back to the Planning Department and Planning Commission to correct those errors. The Board of Supervisors also requested expanded information on cultural resources. The Board of Supervisors, by its Motion M01-127, disapproved the certification of the Final EIR and remanded the Final EIR to the Planning Commission. The Board of Supervisors' findings directed the Planning Commission and Planning Department to revise the Final EIR to include corrections and related environmental analysis, as may be appropriate under CEQA, on the following issues: (1) errors and discrepancies in the shadow impacts analysis relative to the height of the Tower; (2) errors and discrepancies in the visual impacts analysis relative to the height of the Tower; (3) updating and correcting the Project Description relative to the height of the tower and to other information now available regarding the proposed Project design; and (4) broadening and correcting the description and related impacts analysis of the Project environmental setting relative to existing and potentially qualified historic resources, already addressed on Final EIR pages C&R.80 - C&R.82.

The Project's Educational Tower has been redesigned from the 160 foot height as described in the December 2000 Final EIR to 144 feet, with floor dimensions ranging from approximately 41 feet by 93 feet at the first floor to about 41 feet by 108 feet at the top, or ninth, floor. The Final EIR now includes minor text changes to reflect the updated information on the project description in the following sections: the Summary; the Project Description; and, the Visual Quality and Shadow Impact Analyses contained in

Chapter III. Figures 7 – 10 C have been revised to show the visual quality impacts of the revised Project. A new Figure 8A has been added to show the Educational Tower from the Concourse at the northeast corner of the Project site. The Shadow Trace in Figure 11 has been revised and Figures 11 – 15 have been revised to show the shadow effects of the Tower, as modified. The Final EIR has also been amended to include expanded information about the cultural resources in the area. The text set forth in Chapter III A, Land Use, Plans and Zoning, now includes a specific reference to the cultural resources in the area. The Responses to Comments, pages C&R 67 – C&R 85H, include expanded information about cultural resources based upon *An Evaluation of the Potential Effect of the Proposed New de Young Museum on the Golden Gate Park Historic District* (Report), a report prepared by Page & Turnbull, historic architectural consultants. The Report's conclusions are consistent with the conclusions in the Initial Study and the conclusions in the December 2000 Final EIR that the Project would not adversely affect the eligibility of Golden Gate Park for listing as a potential National Register Historic District, or the Japanese Tea Garden or Spreckels Temple of Music as existing or potential National Register listings.

The revised sections of the Final EIR were published and made available to the Planning Commission and the public on November 20, 2001. The revisions did not add significant new information to the December 2000 Final EIR or change the conclusions reached in the December 2000 Final EIR; the revisions updated the text to reflect changes in the Project and to provide additional information about cultural resources. In its Motion No. 16291 certifying the revised FEIR, the Planning Commission specifically found that recirculation of the document was not required because the revisions did not identify any of the following:

- A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
- A substantial increase in the severity of an environmental impact unless mitigation measures are adopted to reduce the impact;
- A feasible project alternative or mitigation measure considerably different from others previously analyzed clearly lessening the significant environmental impacts of the project, but the project proponents decline to adopt it;
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The Planning Commission found in its Motion No. 16291 that the revised FEIR did not identify new or substantially more severe environmental impacts, did not identify new mitigation measures or identify any new alternatives to the Project. The information on cultural resources expanded upon information contained in the December 2000 Final EIR but did not identify any significant environmental impact on cultural resources, nor did it alter the conclusions of the December 2000 Final EIR. The Board of Supervisors affirmed the Planning Commission's certification of the revised FEIR on January 14, 2002 by its Motion No. M02-8. All references to the FEIR in this Attachment A shall refer to the revised FEIR.

On January 24, 2002, the Planning Commission adopted CEQA findings in its MOtion No. 16336. The Planning Commission also found that the shadow impacts of the Project are not adverse for elements of Golden Gate Park, and that the shadow impacts are de minimus and not significant for Golden Gate Park as a whole in its Motion No. 16337. The Planning Commission found that the Project is consistent with the General Plan in its Motion No. 16338. On January 28, 2002 the Zoning Administrator granted the parking variance for the Project.

III. ALTERNATIVES

A. Introduction. As recognized in the FEIR, the M.H. de Young Museum and Golden Gate Park, which provides the museum's setting, are beloved San Francisco institutions. For this reason and because the museum is a significant public project, planning for the New de Young Museum has been ongoing for several years, and has been the subject of numerous public workshops, meetings of the Board of Trustees and other public forums. The overwhelming public sentiment has been to ensure retention of the museum in Golden Gate Park and not relocate it to another site in San Francisco. The Project analyzed in the FEIR is the culmination of this public process.

The FEIR does not identify any project-specific significant environmental effects and there would be no significant adverse effects of the project that could only be reduced or eliminated by selection of an alternative project design, size or location. Therefore, the FEIR analyzed two alternatives to the Project: (1) Alternative A, the "No Project Alternative" and (2) Alternative B, the Reuse of Existing Museum Buildings. The FEIR also discussed Alternative C: Alternative Locations Considered.

B. Project Objectives. The Board of Trustees's primary goal of building a new de Young Museum is to provide a safe and up-to-date facility for visitors, staff and the City's art collections. Consistent with this primary goal is the desire to create a world-class public building that defines the image of the Museum through exciting architecture, design and landscape integration. The Board of Trustees believes that this new museum will trigger a revitalized era of art, education and culture at the de Young Museum that would benefit the City and the Bay region. The Project most closely achieves the objectives set forth in the FEIR as follows:

1. **To assure safety** by: providing a seismically safe building for the public, staff, and works of art; creating a facility free from hazardous materials (e.g., asbestos, lead); providing code-compliant, museum-quality systems such as Heating/Ventilation/Air Conditioning, life safety and fire detection/suppression systems; improving staff work areas to meet museum and occupational health and safety standards, providing a state-of-the-art security system; and improving art delivery, movement and handling systems.

Goal 1: Provide highest level of protection for visitors and art objects through the use of base isolation.

The Museum suffered damage during the 1989 Loma Prieta earthquake, resulting in the necessity to install a system of seismic bracing on the building exterior and roof. This damage led to loss of the federal indemnification necessary to host major traveling exhibitions and designation by the City as having a high seismic risk. Structural and other problems associated with the existing buildings also have led to conditions unsuitable to housing the museum's valuable art collection, including moisture problems that are damaging the collection. For these reasons, a new, state-of-the art facility is necessary to provide a safe structure for the public and for the valuable art collection.

2. **To improve access** by: increasing convenience and safety for San Francisco residents, regional visitors, and tourists; providing a fully accessible facility for all visitors; and improving access via public transportation and automobiles.

   - Goal 1: Provide multiple entrances and large free zone within the museum to encourage and simplify entry and participation in museum programs.
   - Goal 2: Provide separate entry for school groups directly to education program areas to better accommodate students' and teachers' needs.
   - Goal 3: Provide new visitor drop-off zones for school buses, tour buses, taxis, etc. outside the flow of traffic for more safety.

The new museum would provide a fully accessible facility, with a main vehicle drop-off area and primary entrance on Tea Garden Drive, with additional entryways allowing non-ticketed access to the museum's lobby, education tower and other special museum areas such as the Piazzoni Mural Room. The new drop-off zones would be sited in a way that minimizes interference with traffic along Tea Garden Drive. In these ways, the design of the new museum will provide a safer environment for all visitors to the museum, including children arriving with school groups, and will enable the free flow of traffic in and around the Music Concourse area.

3. **To accommodate a growing art collection** by: providing adequate, flexible space and expansion opportunity to meet the goals of the Museum's Collection Development Plan; providing an environment that encourages donors to improve and expand the collection through new gifts and purchases; and improving and expanding study, storage and conservation areas.

- Goal 1: Provide a non-hierarchical and flexible gallery arrangement to provide for the museum's diverse collections.

- Goal 2: Double exhibition space for the collections to accommodate growth.

The existing museum does not provide sufficient space for the museum collection and does not allow for growth of the collection. Not only is exhibition space limited but existing storage space is inadequate under current conditions at the museum. In contrast to the existing space, the new space offered in the museum will allow for a broader range of space to exhibit the collections, both permanent and visiting. It also will allow for sufficient storage and conservation areas. New, usable floors in the educational tower will provide classrooms and other amenities that cannot be accommodated in the current museum buildings.

4. **To enhance the museum experience** by: providing a setting that welcomes all visitors and establishes the museum as an urban oasis; creating a dynamic identity for the museum that symbolizes its mission, aspirations to excellence, and San Francisco's civic pride; and creating a user-friendly facility that encourages visitation and increases enjoyment of the museum.

    - Goal 1: Provide interior courtyards that bring the park and natural light into the museum and provide vistas out into the park to improve the relationship of the museum with the park.

    - Goal 2: Create a new sculpture garden to integrate the park experience with the museum programs and provide a new public amenity.

    - Goal 3: Expand visitor resources by making previously non-public resources open to the public, by creating new library reading room and textile study center.

    - Goal 4: Expand visitor amenities such as coat check, restrooms, rest areas, restaurant and outdoor café space.

    - Goal 5: Create a room to house the Piazzoni Murals removed from the Old Main Library.

These objectives and goals would be met through the provision of more square footage on a smaller building footprint. The increase in area on a smaller footprint, due to incorporation of a full basement and full second floor and Asian Art Museum's move to the Civic Center, allows substantial new landscaped areas which would bring the park experience into the museum. It also allows space for two new public amenities, a new

Sculpture Garden and new Children's Garden. These areas, along with new café space, a museum store, tower observation area and inner courtyards will significantly enhance the visitor experience. A Piazzoni Mural Room has been incorporated into the Project to house the murals removed from the Old Main Library.

5. **To broaden educational services** by: providing multi-purpose educational classrooms and resource center; expanding orientation, information, and interpretive spaces and galleries; incorporating new technologies; expanding the reference library; and expanding and continuing development of "Gallery One," the children's gallery.

   - Goal 1: Consolidate and expand educational programming into a major feature of the museum such as the tower where it will be both a symbol of the commitment of the museum to education and also an efficient and exciting space.

   - Goal 2: Expand the museum's ability to offer high school and college educational programs.

   - Goal 3: Provide a children's program area for younger children that is secure and easily accessible.

   - Goal 4: Provide an outdoor play and education area for children that connects the museum's programs with the outdoor environment.

These objectives and goals would be met through the provision of additional areas for educational purposes, particularly the new space in the educational tower, including classrooms, library reading room, education administration space, teachers' resource center and artist studio. The auditorium and children's art gallery would provide additional educational opportunities. New outdoor space will be provided in the form of an Sculpture Garden (creating approximately 50,000 square feet of outdoor space between the Museum and the Japanese Tea Garden) and a Garden of Enchantment (incorporating approximately 30,000 square feet of open space). Proposed as a children's garden, the Garden of Enchantment will serve as a teaching and gathering area for school groups.

6. **To attract popular temporary exhibitions to San Francisco** by: expanding programs to attract and diversify visitors from all communities; and providing exhibitions that enhance visitor enjoyment through exposure to new art ideas and cultures.

   - Goal 1: Provide a temporary exhibition facility separate from the collection areas that will provide more flexibility in programming without interfering with the other activities of the museum.

- Goal 2: Provide a state-of-the-art flexible facility that will attract both diverse and world-class exhibitions.

These objectives and goals would be met through provision of new space within the museum to accommodate temporary exhibitions. With construction of a new facility, the Museum will again be able to secure the federal indemnification necessary to host major traveling exhibitions. Not only would the new facility provide additional space to accommodate traveling exhibits, but there is separate space specifically designated for these exhibits. This will minimize conflicts with the Museum's permanent collection.

7. **To maintain economic vitality** by: increasing attendance; designing a cost-efficient facility that will minimize operating expenses; expanding earned revenue on all income-producing activities, including admissions, temporary exhibitions, the café, bookstore, auditorium, etc., and increasing rental usage by outside groups, particularly during non-public hours.

    - Goal 1: Provide energy-efficient building systems and incorporate to the extent possible sustainable design features and approaches.

    - Goal 2: Provide ready access to features such as the museum store and restaurant without ticketing.

These objectives and goals would be met through construction of a new state-of-the-art facility, which would have a central, energy efficient HVAC system. A main entryway and two additional entrances would provide access to the museum collections as well as the Sculpture Garden, Garden of Enchantment, café and museum store.

8. **To support the City of San Francisco** by: expanding the museum's contribution to San Francisco's economy through visitor support of local restaurants, hotels, and retail; seeking a compatible and synergistic relationship with the museum's neighborhood(s); and adhering to the policies of the City and County of San Francisco.

    - Goal 1: Create a distinctive design that will advance the de Young as a landmark that serves to attract the local community and visitors alike.

    - Goal 2: Create an outstanding civic amenity at no cost to the taxpayers of San Francisco.

Privately funded, the New de Young Museum would provide a new state-of-the-art facility without cost to the City. The new museum, designed by world class architects, will create a distinctive new structure for the benefit of City residents and visitors to Golden Gate Park. Not only does the design contribute to the Museum as a landmark feature of the Park, it also creates significant new open space areas serving as a buffer to the adjacent Japanese Tea Garden and enhancing the relationship between the Museum and Park experience.

C. Reasons for Rejection of Alternatives.

The FEIR analyzed two alternatives and discussed alternative sites previously considered by the Project Sponsor and rejected. The Alternatives are rejected because the Board of Trustees finds that there is substantial evidence of specific economic, legal, social, technological and other considerations that make such Alternatives infeasible, as set forth below.

1. Alternative A. Alternative A, the "No Project" Alternative described at pages 88 through 90 of the FEIR, is rejected in favor of the Project and is found infeasible for the following environmental, economic, legal, social and technological reasons:

Alternative A would not be desirable nor meet the Project Sponsor's Objectives. The Asian Art Museum would vacate its space at the existing buildings and relocate to the Civic Center. The extensive existing deficient structural, utilities, climate-control, seismic, security and life-safety conditions which currently exist would continue or would require substantial expenditures to correct. Due to damage occasioned as a result of the 1989 Loma Prieta earthquake, the de Young Museum lost its federal indemnification necessary to host major traveling exhibitions. It is unlikely that the indemnification could be secured such that major temporary exhibits could again be hosted by the Museum. Under this alternative, it is possible that the Museum would still go forward with its plans to close, leaving an empty building that is in need of substantial repair in order to continue to be occupied. Closure of the Museum could force the Museum to relocate outside Golden Gate Park or to close and store its art collections. If the existing buildings remained unoccupied, this would create detrimental effects on Golden Gate Park generally and on the Music Concourse area specifically. Loss of the Museum's institutional presence in Golden Gate Park reduces cultural and recreational opportunities in the Park.

2. Alternative B. Alternative B, the "Reuse of Existing Museum Buildings" Alternative described at pages 90 through 92 of the FEIR, is rejected and is found infeasible for the following environmental, economic, legal, social and technological reasons:

Alternative B would not be desirable nor meet the Board of Trustees' objectives. This alternative would require, for structural reasons, the demolition and reconstruction of at least 80% of the interior of the buildings, as well as significant portions of the buildings' exteriors. Extensive structural and other upgrades, as identified on page 91 of the FEIR and in the *New de Young Museum EIR*, Rehabilitation Statement, June 2000, a copy of which is on file with the Planning Department at 30 Van Ness Avenue, would be required to address the structural, life-safety, hazardous materials remediation, climate control (which is critical in order to protect the art collection), utilities and security systems, and disabled access upgrades. Under this alternative, the Asian Art Museum would still vacate and relocate to the Civic Center. This alternative would not reduce the building footprint, which would occur with the Project, and therefore, there would be no additional landscaped areas. Loading activities would still occur on the surface of the Park rather than within the building. Also, while the Project would cast limited shadow on the playground and lawn area across John F. Kennedy Drive, the substantial reduction in shadows on the Music Concourse and the Japanese Tea Garden which would occur with the Project would not occur under this alternative. This alternative would not create the additional buffer between the Museum and the Japanese Tea Garden, nor would it result in the significant new amenities offered with the Project, such as the Garden of Enchantment and Sculpture Garden which would enhance the Museum's relationship to the Park.

3. Alternative C. Alternative C, the "Alternative Sites Considered" is discussed at pages 92 through 93 of the FEIR. A 1997 study, the *M.H. de Young Memorial Museum Site Selection Study*, summarized the potential museum sites: Transbay District, Mid-Embarcadero (Davis, Clay, Washington and The Embarcadero), Broadway and The Embarcadero, and Golden Gate Park. Although the Mid-Embarcadero site was identified in the study as the strongest potential site, the Golden Gate Park site was the overwhelming choice expressed by the public. The Transbay District site assumed relocation of the Transbay Transit Terminal which relocation is not now occurring and, therefore, this site would not likely be available. The Mid-Embarcadero site is now proposed as open space. The Broadway/Embarcadero site is owned by the Port of San Francisco who has offered it for lease for a hotel development. For these reasons, the alternative sites are not feasible.

IV. MITIGATION MEASURES

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The mitigation measures listed in this Section IV mitigate the potential significant impacts of the Project, as described in the FEIR.

The findings in this section concern mitigation measures set forth in the FEIR. These findings fall into two categories: (1) mitigation measures proposed in the FEIR but which are not feasible at this time and would not be implemented in connection with the Project for the reasons stated but are recommended by the Board of Trustees for adoption, if appropriate, at the time of implementation of the Music Concourse garage project; and (2) mitigation measures that are proposed as part of the Project and are adopted by the Board of Trustees exactly as proposed in the FEIR.

All of the mitigation measures discussed in the FEIR are coded and attached hereto as Exhibit 1. In the text of these findings, mitigation measures adopted by the Board of Trustees are referenced by the topic and number in Exhibit 1.

The mitigation measures proposed for the Project will govern the actual construction, operation and use of the Project. These measures are most appropriately adopted by the Board of Trustees. Therefore, the mitigation measures listed under Section B (Mitigation Measures Proposed as Part of the Project and Adopted by the Board of Trustees) are adopted by the Board of Trustees.

A. Mitigation Measures Not Adopted. The Board of Trustees finds that the following mitigation measures as they appear in the FEIR are not included in the Project and are infeasible for implementation at this time for the reasons described below. The Board of Trustees believes that such measures may be appropriate for implementation in the future, at such time as the planned Music Concourse garage proceeds, the Academy of Science project proceeds as well as other development assumed in the area, and should be considered and implemented at that time if determined to be feasible. The measures are infeasible at this time and, therefore, are rejected for implementation in connection with the Project at this time, but are recommended for adoption by the appropriate City agencies, if feasible, in connection with other development projects, including the Music Concourse garage and the Academy of Science, for the reasons described below.

1. Transportation.

The following measures were identified in the Project FEIR to mitigate cumulative traffic impacts associated with the Project and other cumulative conditions. These measures will not be implemented in connection with the Project and are infeasible at this time for the following reasons:

a. Cumulative Traffic Conditions.

With the project and Music Concourse Garage Assumption A (this assumes that the only access point to the garage would be at the intersection of Fulton Street/Tenth Avenue), the intersection of Fulton/Stanyan would change from LOS D to LOS E. To avoid this impact, prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (from 4:00 to 6:00 PM). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds. The impact that would be addressed by this measure would be the significant impact associated with Garage Assumption A. The impact could be exacerbated to some degree with vehicle trips generated by the Project; however, this impact would not result from Project vehicle trips alone. Until final plans for the garage are developed, it is impossible to know whether implementation of this mitigation measure would be appropriate or feasible given the garage configuration and location of entrances to the garage. This measure is not necessary to mitigate a Project impact if only the Project were implemented without other future development, nor is it feasible for implementation in connection with the Project as the Garage Concourse Authority and other agencies will have the final determination as to appropriate and feasible traffic mitigation measures that will reduce or elimination significant impacts associated with the garage and other future development in the area.

2. 2015 Traffic Conditions.

By 2015, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The following changes could mitigate the cumulative conditions, at these intersections:

a. Fulton Street/Stanyan Street- Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions); the intersection operations would improve to LOS D, with an average delay of 33.6 seconds per vehicle.

b. Fulton Street/Eighth Avenue - With Concourse Garage Assumption A analyzed in the FEIR, Eighth Avenue was assumed to become the primary vehicle entrance to this area of Golden Gate Park, as discussed on p. 70. For this reason, there would be a substantial increase in traffic volumes at this intersection, leading to relatively high delays per vehicle at each approach. To improve the operating conditions at this intersection, provide an additional northbound lane and a westbound left-turn pocket. With these measures, the intersection operations would improve to LOS D, with an average delay per vehicle of 29.5 seconds. To create sufficient right-of-way for these measures, it would be necessary to remove on-street parking at the northbound and westbound approaches. It should be noted that on-street parking along Eighth Avenue within the park may be eliminated in conjunction with the Music Concourse Garage, resulting in sufficient right-of-way for the additional northbound travel lane.

c. Tea Garden Drive/Eighth Avenue - With Garage Assumption A, the increase in traffic volumes at the Eighth Avenue entrance would also result in poor operating conditions at the intersection of Tea Garden/Eighth Avenue. Providing two lanes at the southbound approach would improve the operating conditions to LOS C at the worst approach. This measure would require designation of right-of-way, as part of planning for the Concourse area.

Because the Project contributes to the 2015 cumulative traffic conditions that would result with implementation of Garage Assumption A, the project proposed for the Academy of Science and the Project, mitigation would be required to reduce these cumulative impacts to a nonsignificant level. At the intersection of Fulton Street/Stanyan Street (which would operate at LOS D under 2015 cumulative conditions), the Project would contribute 7.6% of the growth in traffic volumes and 1.3% of the total 2015 cumulative volumes. At the intersection of Fulton Street/Eighth Avenue (also at LOS D under 2015 cumulative conditions), the Project would contribute 26.1% of the growth in traffic volumes and 6.5% of the total 2015 cumulative volumes. At the intersection of Tea Garden Drive/Eighth Avenue (at which the worst approach would operate at LOS E under 2015 cumulative conditions), the Project would contribute 41% of the growth in traffic volumes and 14% of the total 2015 cumulative volume. The impacts could be exacerbated to some degree with vehicle trips generated by the Project; however, these impacts would not result from Project vehicle trips alone. Until final plans for the garage are developed, it is impossible to know whether implementation of these mitigation measures would be appropriate or feasible given the garage configuration and location of entrances to the garage. These measures are not necessary to mitigate a Project impact if only the Project were implemented without other future development, nor are they feasible for implementation in connection with the Project as the Garage Concourse Authority and other agencies will have the final determination as to appropriate and feasible traffic mitigation measures that will reduce or eliminate significant impacts associated with the garage and other future development in the area.

B. Mitigation Measures Proposed as Part of the Project And Adopted By the Board of Trustees. The following mitigation measures in the FEIR are found by the Board of Trustees to mitigate, reduce or avoid potentially significant environmental effects and are adopted by the Board of Trustees, with monitoring by other City agencies as set forth in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit 2, and have been incorporated into the Project:

1. Air Quality.

Because the Project would not exceed 2,000 vehicle trips per day, the Project would not exceed established CO thresholds and, therefore, Project air quality impacts would be less than significant. The Project also would not contribute significantly to cumulative air quality impacts. *See* FEIR, pp. 75-78. For these reasons, no mitigation is required. However, the following measures have been proposed as part of the Project, and are included in the Mitigation Monitoring and Reporting Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

a. The Project Sponsor would require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.

b. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the Project Sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The Project Sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulate and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions from equipment that would be in frequent use for much of the construction period.

2. Noise.

No significant noise impacts resulting from the Project have been identified. However, the Initial Study recommended that the following mitigation measure be adopted to mitigate any impacts on adjacent buildings or receptors in the Project vicinity associated with noise generated from construction activities. This measure has been proposed as part of the Project and is included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts this measure as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

The Project Sponsor would require project construction contractor(s) to pre-drill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the Project Sponsor would also require that contractors limit pile-driving activity to result in the least disturbance to neighbors.

3. Geology/Topography.

No significant geology/topography impacts associated with the Project have been identified. However, the Project site is located in an area subject to ground shaking from earthquakes along the San Andreas and Northern Hayward Faults, and other faults in the San Francisco Bay Area. It is not in an area of liquefaction potential. To ensure compliance with all San Francisco building codes, the following measures have been proposed in the Initial Study. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

a. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The Project Sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The Project Sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.

b. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgment of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The Project Sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor.

If dewatering were necessary, the Project Sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.

c. The Project Sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.

4. Water Quality.

No significant water quality impacts associated with the Project have been identified. However, because dewatering could be required during Project construction, the Initial Study identifies the following measure. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

The Project Sponsor would ensure that groundwater from site dewatering and stormwater runoff meets the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:

a. If dewatering were necessary, the Project Sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.

If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.

b. The Project Sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.

5. Hazards.

No significant hazard impacts associated with the Project have been identified. However, the Initial Study proposes adoption of the following mitigation measures to address potential health and safety issues related to future hazardous materials use, contaminated soil and groundwater, potentially hazardous building components, and fire safety and emergency access. These measures would reduce the potential impacts to less-than-significant levels. These measures have been proposed as part of the Project and are included in the Mitigation and Monitoring Program adopted by the Board of Trustees and set forth in Exhibit 2 to these Findings. The Board of Trustees adopts these measures as part of the Project and recommends that the Department of Building Inspection and/or Department of Public Works monitor their implementation, as appropriate.

In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq*. At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

> a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.
>
> If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would

conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.

b. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.

c. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous materials have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.

C. Adoption of Mitigation Monitoring Program.

The Board of Trustees hereby adopts a Mitigation Monitoring Program as required by Section 21081.6 of the California Public Resources Code. This Mitigation Monitoring Program is attached hereto as Exhibit 2 and is incorporated herein by reference. The purpose of this Program is to determine the stage at which each of the adopted mitigation measures must be imposed in order to ensure that the measure is carried out by the responsible official or entity, or, if the obligation lies with the Board of Trustees, that the City enforces the obligation.

V. SIGNIFICANT ENVIRONMENTAL IMPACTS

While no significant adverse environmental impacts associated with the Project have been identified, the following findings relate to cumulative traffic impacts, areas that were either discussed in the Draft EIR to determine whether the Project would result in a significant impact, or areas which commentors on the Project claimed would result in significant adverse impacts.

A. Significant Environmental Impacts

1. Cumulative Transportation Impacts. With the Project and Music Concourse Garage Assumption A (this assumes that the only access point to the garage would be at the intersection of Fulton Street/Tenth Avenue), the intersection of Fulton/Stanyan would change from LOS D to LOS E. The impact that would be addressed by this measure would be the significant impact associated with Garage Assumption A. The impact could be exacerbated to some degree with vehicle trips generated by the Project; however, this impact would not result from Project vehicle trips alone. By 2015, if Garage Assumption A is implemented and the Academy of Science Project proceeds, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS D, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The Project's contribution to the 2015 cumulative traffic conditions would not be significant The Project's contribution to 2015 cumulative conditions at the intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would not be substantial. At the intersection of Tea Garden Drive/Eighth Avenue (at which the worst approach would operate at LOS E under 2015 cumulative conditions), the Project would have a less-than-significant contribution to the LOS E conditions at only one approach to this stop-sign controlled intersection.

2. Other Impacts. Potentially significant environmental impacts with respect to air quality, noise, geology/topography, water quality and hazards have been addressed with mitigation measures incorporated as part of the Project to be adopted by the Board of Trustees.

B. Impacts Determined Not To Be Significant.

1. Air Quality. Because the Project would not exceed 2,000 vehicle trips per day, the Project would not exceed established CO thresholds and, therefore, Project air quality impacts would be less than significant. The Project also would not contribute significantly to cumulative air quality impacts.

2. Land Use and Zoning. No land use and zoning impacts associated with the Project were identified. The Project proposes a replacement building for the M.H. de Young Museum and would not introduce a new use at the site. This topic was discussed in the FEIR for informational purposes only.

3. Visual Quality. The Project would alter views from the Music Concourse, Tea Garden Drive and John F. Kennedy Drive, and would replace views of the M.H. de Young Museum and Asian Art Museum buildings. The new building would be set back further from Kennedy Drive and would have a smaller footprint, providing additional area for landscaping and new locations from which visitors could view and experience park elements and features. The Project would not substantially change the pastoral character of landscape along Kennedy Drive, would not affect Special Horticultural Areas, including the Hagiwara Japanese Tea Garden and would not substantially change areas of Naturalistic Parkland, or other important landscape features or areas identified in the Golden Gate Park Master Plan.

The proposed educational tower, at 144 feet tall, would be about 19 feet taller than the existing tower and about 14 feet higher from grade at Tea Garden Drive. While the new tower would have a more dominant presence, particularly from certain vantage points, than the existing tower, it does not introduce a new building element into the Music Concourse area or on the Project site. The tower design provides variation in its massing which would lessen the appearance of bulk and would create different visual impressions depending on the vantage point. The design also would create shading on portions of the tower which would lessen any visual effect associated with the tower envelope. The facade of the new tower would have areas of solid wall and glazed window areas. Within the Concourse itself, the pedestrian would likely be more oriented to the lower scale of the main building element, due both to the location of the tower on the site (set back further from Tea Garden Drive) and the introduction of additional amenities at the street level (Garden of Enchantment and Sculpture Garden, along with additional landscaped areas). As with the existing tower, the new tower would not impede views of any specific Park elements or historic features.

While the tower would be visible at locations inside and outside the Park, in considering the overall scale of Golden Gate Park, including Strawberry Hill to the west of the Project site and the dense tree canopy and naturalistic plantings around the existing museum, as well as the urban character of the Park's surroundings, the increased tower height is not significant. These changes would not significantly alter park visitors' experience or disrupt the educational, cultural and recreational uses of this area of Golden Gate Park. Views from outside the Park would be partially screened by trees and would not be considered significant adverse effects.

The differences between the existing museum buildings and the proposed project, including the different tower designs, will create a different visual impression and experience. While the tower will be taller with more depth than the existing tower, the overall building footprint will be reduced and additional landscaped areas provided on site. These changes and the new proposed building, including the tower, would not have a substantial, demonstrable negative aesthetic effect, nor would they result in a substantial degradation or obstruction of any scenic view or vista that is now observed from public areas from the Music Concourse area or the Park.

While the architectural character of the new de Young Museum would differ from that of the existing museum, the overall height, scale and massing of the new structure would not demonstrate a negative aesthetic effect on the visual character of the surrounding area.

No exterior effect lighting for the tower is proposed, although the existing tower is lit at night. Only lighting for life/safety or security purposes is planned, primarily around the base of the tower. The planned programmatic uses of the areas within the tower may operate during evening hours and lighted areas within the tower may be visible from outside the museum at these times. However, no special lighting is planned for any areas beyond that which would be typical to standard classroom type space, and the observation area on the top floor would incorporate minimal lighting levels so that if used at night, the interior lighting would not conflict with views out. Any increase in visibility due to periodic nighttime lighting would be similar to other structures within Golden Gate Park, including the existing museum buildings. The new building would be on an energy management system so that lights would go out when areas were not in use. While nighttime lighting inside the tower would be visible from certain vantage points outside the Park, this lighting would not be obtrusive given the urban context of areas surrounding the Park and would not substantially impact other properties due to the distance of the tower from areas outside the Park.

For all of these reasons, the Project would not have demonstrable negative aesthetic effects on the character of the surrounding area or degrade or obstruct scenic views from public areas and, therefore, would not have any significant adverse visual quality impacts.

4. Shadow. Over the course of the year, without considering the existing dense tree cover, the Project would cast limited shadow on portions of the lawn and playground area north of the Project site across John F. Kennedy Drive for approximately one hour, from 3:00 p.m. to 4:00 p.m. in the afternoon from mid-November to late January. This shadow, totaling about 75 hours of new shadow and representing less than two percent (2%) of daylight hours, would be cast only during a time of year when weather conditions would tend to be either overcast or rainy. Use of the lawn area and playground would likely be less during November to January due to lower daytime temperatures, inclement weather and because twilight and sunset would be earlier. Observations conducted by the EIR preparers during the month of September indicate that visitors use the lawn and playground area under a variety of shade and sun conditions. The Project's intermittent shadow effects would not be expected to adversely affect the use or enjoyment of these areas of the Park. Taking into consideration the existing dense tree cover, no new areas are in shadow that are not already affected by shading from trees.

With the Project, there would be substantial reduction in shading of the Japanese Tea Garden and the Music Concourse that occurs with the existing museum buildings.

The Project would cast very limited new shadow on the edge of the Rhododendron Dell located east of the Project site; this area would already be in shade from existing tree coverage. Project shadows on the lawn and playground areas and the Rhododendron Dell would not be considered a significant adverse impact.

Limited project shadows on residential areas north of Fulton Street would occur for up to one-half hour for about one month in mid-December to mid-January; this does not take into account shading from existing structures on private yards or windows in adjacent structures or shadows from existing dense tree plantings along Fulton Street. These limited shadow effects would not be considered significant adverse effects.

5. Cultural Resources. No significant cultural resources impacts resulting from the Project have been identified. None of the eight buildings on the site meet the definition of historic resource as defined in CEQA and the CEQA Guidelines. There are no historic districts or properties listed in City, state or federal inventories on the Project site. The de Young Museum is not listed on the National or California Registers nor has it been determined eligible for listing in either the California Register or the National Register. The museum is not subject to the provisions of Articles 10 or 11 of the City's Planning Code. The existing eight museum buildings have been constructed at different times, reconstructed and substantially altered over time. They do not represent a cohesive overall architectural character and are an amalgam of cumulative changes. They do not have any distinguishing architectural or historical merit. The museum as an institution is associated with Michael H. de Young; it is the institution and not the physical structures which carry an association with Mr. de Young. The museum will remain, reconstructed in an integrated building that will house the museum's collection.

The original museum, constructed in 1894 for the California Midwinter International Exposition, was added onto in stages between 1917-1921. Michael de Young died in 1925 and the original 1894 Museum building was demolished after his death at the time that the museum was expanded in the late 1920's. Due to structural problems with the building exterior, in 1949 the exterior was remodeled. In 1953, another addition to the building followed. In 1964, the west wing of the building was demolished, followed by numerous interior alterations to the interior of the east wing. After damage caused to the museum in the Loma Prieta earthquake in 1989, the building exterior has been braced with a system of exposed exterior steel, concrete buttresses and steel roof plates. The substantial alterations of the existing museum structures over time, seismic problems and corrective bracing have impacted and severely compromised the integrity of the structures.

The buildings existing today no longer bear a resemblance to the original 1894 building or the building as it existed at the time of Mr. de Young's death. The site is associated with its long standing use for the museum founded by Mr. de Young. This use will continue.

Because the buildings do not constitute historical resources, their demolition does not constitute a significant environmental impact.

The new museum would not detract from, or adversely impact, the overall context of the Music Concourse or the historic resources located in the Music Concourse, including the Spreckels Temple of Music and the Japanese Tea Garden, and, hence, would not adversely affect the ability of the Concourse to qualify as part of a historic district, nor would the new Museum adversely affect the ability of Golden Gate Park to qualify as a historic district or otherwise for listing on the National Register of Historic Places. While the siting of the existing museum buildings are such as to relate across from and adjacent to the Academy of Science and the Spreckels Temple of Music, respectively, and in that way form an overall relationship and context within the Music Concourse, the existing buildings do not provide any continuity of design with, the other Concourse structures and the museum's physical relationship with the Concourse and the other structures would not substantially change as a result of the Project. The new de Young is designed to retain the relationship with the Academy of Science and the Spreckels Temple of Music, while increasing landscaped areas within the Concourse area and as a buffer to the Japanese Tea Garden. The new building would provide a greater integration with the natural landscape of the Park than does the existing museum.

Measures will be taken during Project construction to protect the Japanese Tea Garden and other landscape features from vibrations and other construction activites that could cause damage to this area and to protect other structures within the Music Concourse.

The Page & Turnbull Report elaborates on the information regarding historic resources, but reaches the same conclusions as those in the Initial Study and FEIR. Construction of the Project would not adversely affect any existing or potential historic resources, as discussed in the Page & Turnbull Report and the FEIR.

C. Adequacy of FEIR

Although the Educational Tower has been modified, this Board of Trustees finds that (1) modifications incorporated into the Project and reflected in this approval did not and will not require any major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken which would require any major revisions to the FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIR; and (3) no new information of substantial importance to the Project has become available which would indicate (a) the Project will have significant effects not discussed in the FEIR, (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FEIR would substantially reduce one or more significant effects on the environment.

VI. UNAVOIDABLE SIGNIFICANT ENVIRONMENTAL IMPACTS

In the event that the proposed mitigation measures are not implemented in the future to address the cumulative significant environmental impacts on traffic conditions, the following unavoidable significant environmental impacts may result. The cumulative impacts of implementation of the Project and Music Concourse Garage Assumption A would result in the signalized intersection of Fulton Street/Stanyan Street changing from LOS D to LOS E. By 2015, with implementation of the Project and Music Concourse Garage Assumption A, and other development including the Academy of Science, it is anticipated that three intersections could operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E.

VII. STATEMENT OF OVERRIDING CONSIDERATIONS

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, the Board of Trustees finds, after considering the FEIR, that specific overriding economic, legal, social and other considerations, as set forth below, outweigh the identified significant effects on the environment. In addition, the Board of Trustees finds that those Project Alternatives and mitigation measures described in the FEIR that have been rejected, are also rejected for the following specific economic, social or other considerations, in and of themselves, in addition to the specific reasons discussed in Article III above. The benefits of this project include:

- State-of-the-art seismic engineering, including base isolation, will ensure safety of visitors and collections;
- State-of-the-art heating, ventilating and air conditioning systems will provide comfort for visitors as well as collection protection executed through energy efficient and sustainable design;
- Interior courtyards will "bring the Park into the building" and vistas from the building out into the Park, improving the relationship of the museum to the Park and enhancing the visitor experience with natural light and visual connections to the Park;
- Four entrances, improved ADA access, one third of museum including the Education Tower free to the public, a school bus and visitor drop-off zone, all of which greatly improve access and convenience for visitors;
- Twice the exhibit space to accommodate growing collections and an innovative, non-hierarchical layout that allows for cohesive and integrative presentations of diverse collections;

- Expanded, state-of-the-art collection management and conservation areas to ensure safety and provide for on-going treatment and care of the collections;

- The Education Tower will double functional areas necessary to meet increased demand for educational programming and will be a critical symbol for the educational commitment of the Museum. The children's art gallery will be free, the teachers' resource center, artists' studio and library will expand and be open to the public;

- The Education Tower will maintain the tradition of the iconic image of the de Young with a tower but will be accessible to the public for the first time. Views from the tower of the beauty of Golden Gate Park will enhance the visitor experience and increase the connection between the Museum and the Park;

- State-of-the-Art temporary exhibition space and supporting areas will allow the Museum to attract world-class, exciting temporary exhibitions to San Francisco which would otherwise not be available to Northern California;

- Reduced building footprint allows increased landscaped areas (over 80,000 sq. ft.), better building and landscape integration, significantly increased landscaped separation between the Museum and the Japanese Tea Garden, and expanded public areas;

- Two new public amenities will integrate the park experience and museum program: a sculpture garden in the new landscaped area between the Museum and the Tea Garden and a children's garden incorporating the Pool of Enchantment, sculpture and a children's activity area;

- Building scale and orientation retains and improves on tradition of building's orientation to the Concourse and area road-ways through its formal entry from the Concourse, set-back from Tea Garden Drive and increased set-back from JFK Drive;

- Restaurant opening into the Park continues the Oakes Garden tradition of providing a quiet contemplative place to rest and enjoy the Park environment;

- Expanded and improved visitor amenities, such as the tower library reading room will make the Museum, its programs and collections more accessible and comfortable;

- A distinctive institution that will advance the de Young as a landmark American art museum: a forward thinking, beautiful, and visitor-friendly facility that serves and attracts the local community, regional visitors and tourists alike; and

- An outstanding museum at no cost to the taxpayers of San Francisco. The funds for this project are being raised privately. It will be the largest gift to the public in San Francisco's history and at the time of this application, the largest private gift to a public cultural institution in the entire United States. Over $150 million has already been raised from approximately 6,000 individuals and foundations.

Having considered these Project benefits, including the benefits discussed in Article III, the Board of Trustees finds that the benefits of the Project outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

EXHIBIT 1

NEW DE YOUNG MUSEUM
FEIR MITIGATION MEASURES

A. TRANSPORTATION

The following measures were identified in the Project FEIR but will not be implemented in connection with the Project.

1. Cumulative Traffic Conditions

With the project and Music Concourse Garage Assumption A, the intersection of Fulton/Stanyan would change from LOS D to LOS E. To avoid this impact, prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (from 4:00 to 6:00 PM). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds.

2. 2015 Traffic Conditions

By 2015, it is anticipated that three intersections would operate at unacceptable service levels - the signalized intersections of Fulton Street/Stanyan Street and Fulton Street/Eighth Avenue would operate at LOS F, and the worst approach at the unsignalized intersection of Tea Garden/Eighth Avenue would operate at LOS E. The following changes could mitigate the cumulative conditions, at these intersections:

a. Fulton Street/Stanyan Street- Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions); the intersection operations would improve to LOS D, with an average delay of 33.6 seconds per vehicle.

b. Fulton Street/Eighth Avenue - With Concourse Garage Assumption A analyzed in the EIR, Eighth Avenue was assumed to become the primary vehicle entrance to this area of Golden Gate Park, as discussed on p. 70. For this reason, there would be a substantial increase in traffic volumes at this intersection, leading to relatively high delays per vehicle at each approach. To improve the operating conditions at this intersection, provide an additional northbound lane and a westbound left-turn pocket. With these measures, the intersection operations would improve to LOS D, with an average delay per vehicle of 29.5 seconds. To create sufficient right-of-way for these measures, it would be necessary to remove on-street parking at the northbound and westbound approaches. It should be noted that on-street parking along Eighth Avenue within the park may be eliminated in conjunction with the Music Concourse Garage, resulting in sufficient right-of-way for the additional northbound travel lane.

c. Tea Garden Drive/Eighth Avenue - With Garage Assumption A, the increase in traffic volumes at the Eighth Avenue entrance would also result in poor operating conditions at the intersection of Tea Garden/Eighth Avenue. Providing two lanes at the southbound approach would improve the operating conditions to LOS C at the worst approach. This measure would require designation of right-of-way, as part of planning for the Concourse area.

All of the remaining mitigation measures set forth below are proposed as part of the Project.

B. AIR QUALITY

1. The project sponsor would require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.

2. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The project sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulate and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions from equipment that would -be in frequent use for much of the construction period.

C. NOISE

The project sponsor would require project construction contractor(s) to predrill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the project sponsor would also require that

Exhibit 1

contractors limit pile-driving activity to result in the least disturbance to neighbors.

D. GEOLOGY / TOPOGRAPHY

1. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The project sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The project sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.

2. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgement of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The project sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor.

   If dewatering were necessary, the project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.

3. The project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.

E. WATER QUALITY

The project sponsor would ensure that groundwater from site dewatering and stormwater runoff meets the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:

1. If dewatering were necessary, the project sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.

   If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.

2. The project sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.

F. HAZARDS

In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq*. At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.

If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.

b. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.

c. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous materials have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.

Exhibit 1

EXHIBIT 2

NEW DE YOUNG MUSEUM - MITIGATION MONITORING AND REPORTING PROGRAM

Introduction

Assembly Bill (AB) 3180 was enacted by the State Legislature to provide a mechanism to ensure that mitigation measures adopted through the California Environmental Quality Act (CEQA) process are implemented in a timely manner and in accordance with the terms of project approval. Under AB 3180, local agencies are required to adopt a monitoring or reporting program "designed to ensure compliance during project implementation."

The New de Young Museum Mitigation Monitoring Program ("Mitigation Monitoring Program"), pursuant to AB 3180 CEQA Section 21081.6 and CEQA Guidelines Section 15091 provides the basic framework through which adopted mitigation measures will be monitored to ensure implementation. The full text of the measures as they appear in the FEIR is contained in Exhibit 1 to the New de Young Museum California Environmental Quality Act Findings.

The following table identifies, for each mitigation measure included in the FEIR, the measure, the party responsible for implementing the measure, the time frame for implementation, assigns monitoring responsibility and establishes monitoring actions and a schedule for mitigation monitoring.

While this Program generally outlines the actions, responsibilities, and schedule for mitigation monitoring, it does not attempt to specify the detailed procedures to be used to undertake or verify implementation (e.g., interactions between City departments, use of private consultants, approval of plans, site inspections, etc.). Specific monitoring procedures are either contained in approval documents or will be developed at a later date, closer to the time the mitigation measures will actually be implemented.

Exhibit 2 - NEW DE YOUNG MUSEUM MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
1. TRANSPORTATION				
a. Cumulative Traffic Conditions.				
Prohibit the left-turn movement from eastbound Fulton Street to northbound Stanyan Street; this movement is already prohibited on Monday through Saturday (4:00 to 6:00 p.m.). With this change, the intersection would improve to LOS D, with an average delay per vehicle of 34.1 seconds.	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
b. 2015 Traffic Conditions.				
i. Fulton Street/Stanyan Street - Prohibit the eastbound left-turn movement (as discussed under the Music Concourse Garage conditions).	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
ii. Fulton Street/Eighth Avenue - If Concourse Garage Assumption A analyzed in the EIR is adopted, with Eighth Avenue as the primary vehicle entrance to this area of Golden Gate Park, provide an additional northbound lane and a westbound left-turn pocket.	DPT	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
iii. Tea Garden/Eighth Avenue - If Garage Assumption is adopted, provide two lanes at the southbound approach.	DPT/Recreation & Park Dept/Concourse Authority	Implement prior to completion of Concourse garage	Implement as part of Concourse garage construction process	DPT/DPW
2. AIR QUALITY				
a. Require the contractor(s) to spray the site with water during excavation and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during excavation and construction at least once per day to reduce particulate emissions.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
b. Require the contractor(s) to obtain reclaimed water from the Clean Water Program and use for duct control activities, in accordance with Ordinance 175-91, passed by the Board of Supervisors on May 6,1991.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
3. NOISE				
Require project construction contractor(s) to pre-drill holes to the maximum depth feasible on the basis of soil conditions. Contractors would be required to use construction equipment with state-of-the-art noise shielding and muffling devices. If pile-driving is required, the project sponsor would also require that contractors limit pile-driving activity to result in the least disturbance to neighbors.	Project Sponsor	As required during construction activities	Ensure implementation as part of site permit process	DBI

Exhibit 2

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
4. GEOLOGY / TOPOGRAPHY				
a. One or more geotechnical investigations by a California-licensed geotechnical engineer are included as part of the project. The project sponsor and its contractors would follow the recommendations of the final geotechnical reports regarding any excavation and construction for the project. The project sponsor would ensure that the construction contractor conducts a pre-construction survey of existing conditions and monitors the adjacent building for damage during construction, if recommended by the geotechnical engineer.	Project Sponsor	Prior to commencement of, and during, construction	Ensure implementation as part of site permit process	DBI
b. If dewatering were necessary, the final soils report would address the potential settlement and subsidence impacts of this dewatering. Based on this discussion, the soils report would determine whether or not a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets. If a monitoring survey were recommended, the Department of Building Inspection would require that a Special Inspector (as defined in Article 3 of the Building Code) be retained by the project sponsor to perform this monitoring. Instruments would be used to monitor potential settlement and subsidence. If, in the judgment of the Special Inspector, unacceptable movement were to occur during construction, groundwater recharge would be used to halt this settlement. The project sponsor would delay construction if necessary. Costs for the survey and any necessary repairs to service lines under the street would be borne by the project sponsor	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

Exhibit 2

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
If dewatering were necessary, the project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding dewatering to avoid settlement of adjacent streets, utilities, and buildings that could potentially occur as a result of dewatering.				DBI
c. The project sponsor and its contractor would follow the geotechnical engineers' recommendations regarding installation of settlement markers around the perimeter of shoring to monitor any ground movements outside of the shoring itself. Shoring systems would be modified as necessary in the event that substantial movements are detected.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
5. WATER / QUALITY				
The project sponsor would ensure that groundwater form site dewatering and stormwater runoff meet the discharge limitations of the City's Industrial Waste Ordinance by carrying out the following:	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
a. If dewatering were necessary, the project sponsor would follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system. If dewatering were necessary, groundwater pumped from the site would be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission to reduce the amount of sediment entering the combined sewer system.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI
b. The project sponsor would require the general contractor to install and maintain sediment traps in local storm water intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the San Francisco Public Utilities Commission.	Project Sponsor	During construction	Ensure implementation as part of site permit process	DBI

6. HAZARDS

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
In addition to local, state, and federal requirements for handling hazardous materials and soil and groundwater containing chemical contaminants, the project sponsor would enter into a voluntary remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 *et seq.* At a minimum, the project sponsor would undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.	Project Sponsor	Prior to issuance of demolition permits	Ensure implementation as part of site permit process	DBI/DPH
a. A Phase I Environmental Site Assessment would be prepared for the project site. It would list current and past uses of the site, review environmental agency databases and records, report site reconnaissance observations, and summarize potential contamination issues, including any that warrant further investigation. The assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.	Project Sponsor	Prior to issuance of demolition permits	Ensure implementation as part of site permit process	DBI/DPH

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
If warranted on the basis of the Phase I study, a Phase II Environmental Site Assessment would be prepared for the project site. It would involve the collection and analysis of soil and groundwater samples as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. The project sponsor would conduct a soil and groundwater investigation to assess the potential for possible fuel releases from former underground fuel storage tanks and ancillary piping and dispensers located on site. Soil or groundwater samples, or both, would be collected throughout the project site as directed by the site assessment consultant. Sampling would extend at least to depths proposed for excavation. This assessment would be completed by a Registered Environmental Assessor or similarly qualified individual prior to initiating any earth-moving activities at the project site.				
If the Phase I or Phase II assessments result in earth-moving activity that requires preparation of a Site Safety and Health Plan, in addition to measures that protect on-site workers, the plan would include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs, and would apply from the time of surface disruption through the completion of earthwork construction.				

MITIGATION MEASURE	RESPONSIBILITY FOR IMPLEMENTATION	MITIGATION SCHEDULE	MONITORING ACTIONS / SCHEDULE	MONITORING RESPONSIBILITY
b. Prior to any demolition or excavation at the project site, surveys would be conducted to identify any potentially hazardous materials (other than asbestos and lead) in existing buildings or building materials. At a minimum, these surveys would identify any polychlorinated biphenyls, mercury, or other hazardous materials that would require removal and disposal before demolition. These surveys would be completed by a Registered Environmental Assessor or a similarly qualified individual.	Project Sponsor	Conduct surveys prior to issuance of demolition permit	Ensure implementation as part of demolition and site permit process	DBI/DPH
c. All reports and plans prepared in accordance with this mitigation measure would be provided to the San Francisco Department of Public Health and any other agencies identified by the Department of Public Health. When all hazardous material have been removed from existing buildings, and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor would submit to the San Francisco Planning Department and the San Francisco Department of Public Health (and any other agencies identified by the Department of Public Health) a report stating that the mitigation measure has been implemented. The report would describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report would be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.	Project Sponsor	Submit reports after removal of all hazardous materials and completion of soil and groundwater analysis	Ensure implementation as part of demolition and site permit process	DBI/DPH

Exhibit 2